

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

)
) Chapter 9
)
) Case No. 13-53846
)
) Hon. Steven W. Rhodes
)

DECLARATION OF MICHAEL ARTZ

I, Michael Artz, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am Associate General Counsel of the American Federation of State, County & Municipal Employees, AFL-CIO (“**AFSCME**”), and I submit this declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees’ Amended Objection To The City Of Detroit’s Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code* (the “**Objection**”).

2. Attached to my Declaration are the following Exhibits referenced in the Objection:

Exhibit A	A copy of a transcript of the deposition testimony given by Governor Richard D. Snyder on October 9, 2013.
Exhibit B	A copy of a transcript of the deposition testimony given by Emergency Manager Kevyn Orr on September 16, 2013.
Exhibit C	A copy of a transcript of the deposition testimony given by Gaurav Malhotra on September 20, 2013.

Exhibit D	A copy of a transcript of the deposition testimony given by Charles Moore on September 18, 2013.
Exhibit E	A copy of a transcript of the continued deposition testimony given by Emergency Manager Kevyn Orr on October 4, 2013.

Executed on this 11th day of October, 2013

/s/ Michael Artz

Michael Artz, Esq.

EXHIBIT A

In Re: City of Detroit, Debtor

*Governor Richard D. Snyder
October 9, 2013*

*Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804*



Original File 100913RS.TXT

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2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION - DETROIT
4 -----
5 In re: Chapter 9
6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
7 Debtor, Hon. Steven W. Rhodes
8 -----
9 V I D E O T A P E D D E P O S I T I O N O F
10 WITNESS: GOVERNOR RICHARD D. SNYDER
11 LOCATION: The Romney Building
12 111 S. Capitol Avenue
13 Lansing, Michigan
14 DATE: Wednesday, October 9, 2013
15 8:38 a.m.
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4	Examination by Mr. DeChiara	51	4		
5	Examination by Mr. Wertheimer	106	5	Exhibit 10	July 18, 2013 email
6			6	Re: High Priority with attached	
7			7	July 18, 2013 Letter	
8			8	Re: Authorization to Commence	
9			9	Chapter 9 Bankruptcy Proceeding	
10	E X H I B I T I N D E X		10	(Bates Nos. DTMI00116442-445)	153
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12	EXHIBIT NO.	DESCRIPTION PAGE NO.	12	Exhibit 11	Oct. 9, 2013 email
13	Exhibit 1	July 16, 2013 Letter	13	Subject: High Priority	159
14	Re: Recommendation Pursuant to		14	(Exhibit marked post deposition)	
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17	Re: Authorization to Commence		17		
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19	Exhibit 3	City of Detroit Proposal for	19	- - -	
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21	Exhibit 4	Free Press article	21		
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24	retirees in Detroit bankruptcy"	75	24		
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1	E X H I B I T I N D E X		1	Lansing, Michigan	
2			2	October 9, 2013	
3	EXHIBIT NO.	DESCRIPTION PAGE NO.	3	8:38 a.m.	
4	Exhibit 5	Jones Day Presentation to	4	- - -	
5	the City of Detroit on		5	MR. WERTHEIMER: William Wertheimer on	
6	January 29, 2013		6	behalf of the Flowers Plaintiffs.	
7	(Bates Nos. DTMI00128731-8805)	96	7	I would like to put on the record the fact	
8	Exhibit 6	City of Detroit Chapter 9	8	that the order that Judge Rhodes entered under which	
9	Communications Rollout Plan		9	we're conducting this and the other State	
10	(Bates No. SOM200001331)	126	10	depositions provides at Paragraph 7 that the State	
11	Exhibit 7	June 3-7, 2013 email chain	11	would complete its document production by October 5	
12	Re: Financial & Operating Plan		12	provided the parties could mutually agree to extend	
13	Power Point		13	that date.	
14	(Bates No. SOM20001327-28)	126	14	That date has not been extended by	
15	Exhibit 8	July 8, 2013 email	15	agreement. As late as last night at 10:15 -- I woke	
16	Re: Detroit		16	up this morning to find that the State had produced	
17	(Bates No. SOM200003601)	141	17	a fourth production that is not in compliance with	
18	Exhibit 9	July 9, 2013 email	18	the order.	
19	Re: Detroit		19	I want to make clear on the record that we	
20	(Bates No. SOM200003657)	141	20	may take the position that we may need to continue	
21			21	the Governor and the other State's depositions after	
22			22	we have reviewed those documents as we have not	
23			23	looked at any of those documents as of now.	
24			24	MS. NELSON: This is Margaret Nelson on	
25			25	behalf of the State.	

<p style="text-align: right;">Page 9</p> <p>1 The fourth production of documents was made 2 under the State's continuing obligation to 3 supplement its discovery responses. So the fact 4 that our production was completed by the fifth, 5 pursuant to the court order, is irrelevant to the 6 fact that we have an ongoing duty to supplement, and 7 that was the purpose for the additional document 8 production yesterday. 9 MR. WERTHEIMER: I'll leave further 10 argument for later. 11 VIDEO TECHNICIAN: Today's date -- hold on. 12 I have to start over again. Give me a second. 13 (A pause was had in the proceedings.) 14 VIDEO TECHNICIAN: Today's date is 15 October 9th, 2013, and we're on the record at 16 8:42 a.m. 17 This is the video deposition of Governor 18 Richard Snyder. We're at the Romney Office 19 Building, 111 South Capitol Avenue in Lansing, 20 Michigan. 21 Could the reporter administer the oath to 22 the Governor, please. 23 - - - 24 -GOVERNOR RICHARD D. SNYDER- 25 called as a witness, being first duly sworn, was</p>	<p style="text-align: right;">Page 11</p> <p>1 through the appropriations process with the 2 legislature and the Governor. 3 Q. My question was would you support an additional 4 level of support? 5 A. I said I've been supportive of improved services for 6 citizens, not necessarily the repayment of debts. 7 Q. That might have been responsive so I don't mean to 8 be argumentative, but the narrower question is would 9 you support an additional level of support for 10 Detroit in order to help deal with the so-called 11 underfunding pension issue? 12 MS. NELSON: Asked and answered. Go ahead. 13 Go ahead. 14 THE WITNESS: Oh. I view that as a -- 15 that's a question that I couldn't answer because 16 it's a hypothetical. It would depend on the entire 17 situation for the facts depending on the potential 18 plan of adjustment for the debts. 19 BY MS. LEVINE: 20 Q. Well, between March 28, 2013 and June 14, 2013, did 21 you have discussions with Kevyn Orr about a business 22 plan or a restructuring plan or a redevelopment plan 23 for the City of Detroit? 24 A. Kevyn Orr was building a plan for creditors they 25 presented in June of this year.</p>
<p style="text-align: right;">Page 10</p> <p>1 examined and testified as follows: 2 EXAMINATION 3 BY MS. LEVINE: 4 Q. Good morning, Governor. 5 A. Good morning. 6 Q. My name is Sharon Levine. I'm with the law firm of 7 Lowenstein Sandler. I'm here on behalf of AFSCME, 8 and we appreciate your appearing for your deposition 9 today, so thank you. 10 Just for the record, when did you take 11 office as Governor of the State of Michigan? 12 A. January 1, 2011. 13 Q. And at the time you took office, was the State 14 providing greater financial -- a greater level of 15 financial support to the City of Detroit than it is 16 today? 17 A. I would have to check that. 18 Q. Would you be willing to support having the State 19 provide a greater level of financial support than it 20 is today in order to help the City of Detroit with 21 its plan of adjustment and particularly in order to 22 help fund the pension issues? 23 A. In terms of we have many competing interests for the 24 State of Michigan with respect to our budget. I 25 don't make those decisions by myself. It goes</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Did you have discussions with him with regard to 2 that plan before the June presentation? 3 A. I had discussions that would have been subject to 4 attorney-client privilege. 5 Q. Is it your understanding that that plan includes a 6 two billion dollar note for unsecured creditors? 7 A. Yes. 8 Q. And what's your understanding of what that plan 9 includes with regard to vested pension benefits for 10 the citizens of Detroit? 11 A. The proposal includes some portion of that note 12 being allocated towards pensioners. 13 Q. So the plan does not include just leaving the vested 14 pension benefits alone, does it? 15 A. Well, with respect to the funded piece of pension 16 plans, that's available. There's an open question 17 with respect to the unfunded portion. 18 Q. Do you understand that in a Chapter 11 corporate 19 bankruptcy case that the Pension Benefit Guaranty 20 Corporation or the PBGC provides federal insurance 21 for beneficiaries of a pension if a defined benefit 22 plan is terminated? 23 A. Yes. 24 Q. And is it your understanding that in a Chapter 9 25 bankruptcy case there is no similar protection for</p>

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<p>1 vested pension benefits?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding of how the Detroit</p> <p>4 citizens, the AFSCME retirees will support</p> <p>5 themselves assuming that there's a diminution in the</p> <p>6 current level of pension benefit provided?</p> <p>7 A. Could you clarify your question because you had</p> <p>8 conflicting statements.</p> <p>9 You asked about the citizens of Detroit and</p> <p>10 then you asked about the retirees.</p> <p>11 Q. Well, let's go with the retired citizens of Detroit</p> <p>12 first.</p> <p>13 To the extent that their pensions are</p> <p>14 diminished and there is no PBGC or federal</p> <p>15 protection for them, what's your understanding under</p> <p>16 the plan of -- the proposed plan how they will</p> <p>17 support themselves?</p> <p>18 MS. NELSON: Objection; calls for</p> <p>19 speculation, form, foundation.</p> <p>20 THE WITNESS: Given that we're in the</p> <p>21 Chapter 9 process, there's been no plan presented at</p> <p>22 this point in time.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. We already had a little bit of a discussion that</p> <p>25 you're aware of the plan that was presented to</p>	<p>1 attorney and other bankruptcy professionals paid</p> <p>2 ahead of retirees in connection with the Chapter 9</p> <p>3 process?</p> <p>4 A. I view that as a legal matter because that's a</p> <p>5 subject matter of how Chapter 9 bankruptcies work.</p> <p>6 Q. The question I was asking was whether or not you</p> <p>7 believe it's fair. I'm not asking you whether or</p> <p>8 not it's a legal matter.</p> <p>9 A. Well, I view it as just speculation on my part</p> <p>10 because we're in Chapter 9, so that would be part of</p> <p>11 the legal process.</p> <p>12 Q. Is it your understanding that the Wall Street</p> <p>13 creditors, municipal bond holders will share in this</p> <p>14 two billion dollar note alongside of the retirees</p> <p>15 with regard to their unsecured claims?</p> <p>16 A. Again, there has been no plan presented in</p> <p>17 bankruptcy, so that would be a hypothetical. If you</p> <p>18 go back to the proposal to the creditors, that was</p> <p>19 to be part of good faith negotiations, and there was</p> <p>20 an attempt to do that so that would have all been</p> <p>21 consensual.</p> <p>22 Q. Do you believe it's fair to pay Wall Street-type</p> <p>23 municipal bond creditors ahead of retirees?</p> <p>24 A. Again, that's part of the mutual negotiations that</p> <p>25 were part of the proposal for creditors.</p>
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<p>1 creditors in June of 2013, correct?</p> <p>2 A. That was part of going through a process from the</p> <p>3 City of Detroit asking its creditors for good faith</p> <p>4 negotiations.</p> <p>5 Q. Right. And under that plan, to the extent there was</p> <p>6 an underfunding with regard to the pensions, there</p> <p>7 was going to be some change made to the pension</p> <p>8 benefits, correct?</p> <p>9 A. That would depend on mutual agreement between the</p> <p>10 parties.</p> <p>11 Q. Well, assuming that there is a reduction for the</p> <p>12 moment in pension benefits, have you had any</p> <p>13 conversations with Kevyn Orr with regard to whether</p> <p>14 or not there would be any other benefit or provision</p> <p>15 made to the retirees of the City of Detroit that</p> <p>16 were going to lose pension benefits as a result of</p> <p>17 that plan?</p> <p>18 A. Those discussions would have been subject to</p> <p>19 attorney-client privilege.</p> <p>20 Q. What's your understanding of the options that are</p> <p>21 available to the City of Detroit?</p> <p>22 A. Well, again, we're in bankruptcy now so there's been</p> <p>23 no plan presented by the City at this point in time,</p> <p>24 so that's a hypothetical.</p> <p>25 Q. Do you believe it's fair to have the bankruptcy</p>	<p>1 Q. Prior to the time that Detroit filed for bankruptcy,</p> <p>2 is it your understanding that House Speaker Bolger</p> <p>3 had any involvement or discussions with Kevyn Orr</p> <p>4 with regard to the bankruptcy filing?</p> <p>5 A. I don't recall.</p> <p>6 Q. Did he have discussions with you with regard to the</p> <p>7 bankruptcy filing?</p> <p>8 A. In terms of speaking to Speaker Bolger, occasionally</p> <p>9 I would give updates on what was going on with the</p> <p>10 City of Detroit.</p> <p>11 Q. And did he express any views with regard to the</p> <p>12 Chapter 9 filing?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you have any conversations with Randy</p> <p>15 Richardville prior to the Chapter 9 filing?</p> <p>16 A. It would be the same with Speaker Bolger, that as</p> <p>17 part of the normal process I would give updates on</p> <p>18 where the situations stood.</p> <p>19 Q. Do you have any recollection of what he said to you</p> <p>20 with regard to those updates?</p> <p>21 A. No.</p> <p>22 Q. On or about July 18, when you authorized Detroit's</p> <p>23 Chapter 9 filing, what was your understanding of the</p> <p>24 dollar amount of the pension obligations that were</p> <p>25 underfunded?</p>

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<p>1 A. It would be in the approximate three-and-a-half 2 billion dollar range based on the financial 3 statements. 4 Q. What was your source of the underfunding figure when 5 you say financial statements? What financial 6 statements are you referring to? 7 A. The statements that would have been provided by the 8 City of Detroit that would have been included in the 9 review team report. 10 Q. As we sit here today, do you -- is it your 11 understanding that that number is still the number 12 that you're working with? 13 A. My understanding is that there's been further work 14 done by actuaries and consultants that have come up 15 with differing numbers. 16 Q. And as you sit here today, what's your understanding 17 of what the underfunding obligation is with regard 18 to the Detroit pensions? 19 A. Potentially, these other reports could say the 20 underfunded amount was significantly larger. 21 Q. And by significantly larger, do you have a dollar 22 figure or an estimate that you could give us? 23 A. I wouldn't want to speculate. That's known in the 24 report. 25 Q. And what reports specifically are you referring to?</p>	<p>1 privilege. 2 Q. Well, actually, I'm asking you your understanding 3 and not anything that you've discussed with your 4 lawyers. 5 I'm asking you your understanding of 6 whether sometime between July 3 and July 18 you 7 learned that Kevyn Orr was putting together a 8 request for authorization to file Detroit's 9 Chapter 9 petition? 10 A. He was considering a Chapter 9 request to me. 11 Q. Do you recall when you first learned that he was 12 considering a Chapter 9 request to you? 13 A. It would have been sometime between those dates. I 14 don't recall what specific date. 15 Q. But it was sometime between July 3 and July 18? 16 A. It would have been closer to the 18th. 17 Q. And the request came to you on July 16; is that 18 correct? 19 A. Yes. 20 Q. Did you ask Kevyn Orr to send you that request? 21 A. I left it to Kevyn Orr to make the decision. 22 Q. At the time that you received the request, did you 23 agree with the request for the authorization? 24 A. I wanted to review the request. 25 Q. On July 16, was it your understanding that the filed</p>
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<p>1 A. I believe there's a report that Kevyn Orr had 2 commissioned with respect by actuaries to assess the 3 Detroit pension plans. 4 Q. And were those actuaries Milliman? 5 A. I believe so. 6 Q. Do you recall the date of the report? 7 A. No. 8 Q. Was it commissioned after the Chapter 9 filing? 9 A. Again, I didn't -- I was not partaking in the 10 commissioning of the plan itself. You'd have to ask 11 Kevyn Orr. 12 Q. Are you familiar with the litigations, specifically 13 three lawsuits commenced on or around July 3, 2013, 14 challenging the constitutionality of the appointment 15 of the emergency manager and/or certain aspects of 16 the emergency manager law, PA 436? 17 A. Generally, yes. 18 Q. During the period from July 3 to July 18, did you 19 follow this litigation? 20 A. To some degree. 21 Q. Did there come a point in time between July 3 and 22 July 18 that you learned that Kevyn Orr was putting 23 together a request for authorization to file 24 bankruptcy for Detroit? 25 A. That would have been subject to attorney-client</p>	<p>1 state court lawsuits, the so-called Flowers and 2 Webster litigations, were requesting injunctions 3 against among other things your authorizing the 4 Chapter 9 filing? 5 A. Yes. 6 Q. Did you believe that if the injunctions were granted 7 it would have interfered with Kevyn Orr's efforts at 8 restructuring Detroit? 9 A. I didn't consider that. 10 Q. You didn't consider at all the impact of whether or 11 not injunctions issued in those lawsuits would 12 impact the restructuring effort made by Kevyn Orr? 13 A. My concern was is when I received a request from 14 Kevyn, I wanted to make sure I appropriately 15 reviewed that request and in a thoughtful fashion 16 and responded appropriately was my primary concern. 17 Q. Was one of the criteria you used in your thoughtful 18 deliberation the status of those pending 19 litigations? 20 A. Not with respect to injunctions but with respect to 21 the sheer fact of many cases of litigation were 22 going on and that we were ending up in potentially 23 many different courts over many issues that could go 24 beyond the scope of just those lawsuits. 25 Q. So it's your testimony that you -- that although you</p>

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<p>1 took into account the volume of litigation, you did</p> <p>2 not take into account the impact of the injunctions</p> <p>3 which were being sought in those particular</p> <p>4 litigations?</p> <p>5 A. I view those as speculative. Again, there were</p> <p>6 requests -- and those are common requests in many</p> <p>7 lawsuits.</p> <p>8 Q. Changing topics for a minute. NERDs, is that an</p> <p>9 acronym for New Energy to Reinvest Diversity Fund?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know who the donors are to the NERDs Fund?</p> <p>12 MS. NELSON: Objection; outside the scope</p> <p>13 of the protective order and the eligibility</p> <p>14 objections for purposes of this deposition.</p> <p>15 MS. LEVINE: You can answer.</p> <p>16 MS. NELSON: No, he can't answer. It's</p> <p>17 outside the protective order and the scope of this</p> <p>18 deposition.</p> <p>19 MS. LEVINE: How is it outside the</p> <p>20 protective order?</p> <p>21 MS. NELSON: The protective order limits</p> <p>22 the scope of the deposition to the issues identified</p> <p>23 in the eligibility objections, and there's nothing</p> <p>24 in AFSCME's eligibility objections related to the</p> <p>25 NERD Fund or specifically the donors to the NERD</p>	<p>1 A. (No response.)</p> <p>2 Q. Do you know if any of the emergency manager's costs</p> <p>3 or expenses are being paid for or reimbursed by the</p> <p>4 NERDs Fund?</p> <p>5 A. (No response.)</p> <p>6 Q. Do you know if NERD made any other payments to or on</p> <p>7 behalf of Kevyn Orr?</p> <p>8 A. (No response.)</p> <p>9 Q. Do you know if any of the NERDs donors also made</p> <p>10 political contributions to your campaign? If so,</p> <p>11 whom and how much?</p> <p>12 A. (No response.)</p> <p>13 Q. Do you know if any of the NERDs donors also</p> <p>14 contributed to the campaign against PA 4, and, if</p> <p>15 so, which donors were those?</p> <p>16 A. (No response.)</p> <p>17 MS. LEVINE: Is it still the State's</p> <p>18 position that this is unrelated to eligibility?</p> <p>19 MS. NELSON: Yes. Unless you can identify</p> <p>20 specifically the objections in your eligibility</p> <p>21 statement that they relate to.</p> <p>22 MS. LEVINE: It's good faith. It goes to</p> <p>23 good faith and it goes to conflict of interest with</p> <p>24 regard to good faith.</p> <p>25 MS. NELSON: In what context?</p>
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<p>1 Fund.</p> <p>2 MS. LEVINE: Okay. Well, I'm going to run</p> <p>3 through my questions for the record, and if at the</p> <p>4 end of the series of questions on the NERDs Funds</p> <p>5 your position is the same, then we can have the</p> <p>6 Governor not answer, but for the record since we</p> <p>7 only have three hours I'm going to go through it.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Do you know who any of the donors are?</p> <p>10 MS. NELSON: Same objection.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Was Kevyn Orr a donor?</p> <p>13 MS. NELSON: Same objection.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. Is Jones Day a donor?</p> <p>16 A. (No response.)</p> <p>17 Q. Do you know if any of the retained professionals by</p> <p>18 the City of Detroit, either the firms or the</p> <p>19 individuals, are donors or any of the creditors of</p> <p>20 Detroit donors or any of the SWOP party's donors?</p> <p>21 A. (No response.)</p> <p>22 Q. Would you be willing to produce those names?</p> <p>23 A. (No response.)</p> <p>24 Q. If it's not within your control, would you be</p> <p>25 willing to ask NERDs to produce those names?</p>	<p>1 MS. LEVINE: Well, I'm not going to use my</p> <p>2 three hours to have that --</p> <p>3 MS. NELSON: No, I understand that. I -- I</p> <p>4 don't believe that it is -- if you'll let me confer</p> <p>5 with my client, I'll ask him.</p> <p>6 MS. LEVINE: I've learned how to use my</p> <p>7 timer, so that's good my daughter taught me that.</p> <p>8 VIDEO TECHNICIAN: Going off the record</p> <p>9 then?</p> <p>10 MS. LEVINE: Yes. Yes.</p> <p>11 VIDEO TECHNICIAN: Off the record 8:58 a.m.</p> <p>12 (A brief recess was taken.)</p> <p>13 VIDEO TECHNICIAN: We are back on the</p> <p>14 record at 9 a.m.</p> <p>15 MS. NELSON: I've conferred with my client,</p> <p>16 and in the spirit of cooperation and to move these</p> <p>17 proceedings along, he's agreed to respond to your</p> <p>18 questions and can do so fairly quickly.</p> <p>19 THE WITNESS: Yeah, with respect to your</p> <p>20 questions as to who the donors were and those --</p> <p>21 that category of questioning, my answer would be I</p> <p>22 don't know. There's an independent board that does</p> <p>23 that work.</p> <p>24 With respect to the question of expenses,</p> <p>25 Kevyn Orr's agreement is such that some of his</p>

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<p>1 expenses can be reimbursed by the NERD Fund because</p> <p>2 it was created to offset the burdens of government</p> <p>3 and does similar things such as process auditorium</p> <p>4 upgrades, help with expenses for travel.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Do you know whether or not the NERD Fund contributed</p> <p>7 to the campaign against PA 4?</p> <p>8 A. I don't know.</p> <p>9 Q. Or in favor of PA 4?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you prepare for today's deposition?</p> <p>12 A. I had time with my counsel.</p> <p>13 Q. And who was that counsel?</p> <p>14 A. The fine group you're seeing on the other side of</p> <p>15 this table.</p> <p>16 Q. Just because we have a transcript, and I don't know</p> <p>17 if everybody's going to be seeing the videotape but</p> <p>18 the lawyers aren't on the videotape, so for the</p> <p>19 record could you just give the names of your</p> <p>20 lawyers?</p> <p>21 A. Yeah. My attorney, Margaret, who has already been</p> <p>22 identified; Matthew Schneider and Mike Gadola and</p> <p>23 Peter Ellsworth.</p> <p>24 Q. Did you also meet with attorneys for the City of</p> <p>25 Detroit to prepare for today's deposition?</p>	<p>1 A. Yes.</p> <p>2 Q. Is it your understanding that PA 436 was enacted in</p> <p>3 December of 2012?</p> <p>4 A. Yes.</p> <p>5 Q. Is it your understanding that PA 4 was struck by</p> <p>6 voter referendum in November of 2012?</p> <p>7 A. Yes.</p> <p>8 Q. Are you familiar with press coverage that indicates</p> <p>9 that there's some sentiment that PA 436 was</p> <p>10 criticized as a dictatorship or takeover mechanism</p> <p>11 when it was enacted?</p> <p>12 A. I'm aware there were many comments with respect to</p> <p>13 many pieces of legislation.</p> <p>14 Q. I'm asking specifically about those comments with</p> <p>15 regard to PA 436.</p> <p>16 A. Yes.</p> <p>17 Q. Did you have any involvement in bringing PA 436 into</p> <p>18 law?</p> <p>19 A. Yes.</p> <p>20 Q. What was your understanding of the purpose of PA</p> <p>21 436?</p> <p>22 A. It was to be responsive to the voters to actually</p> <p>23 improve on a process that goes back a very long</p> <p>24 time. It goes back to 1988 originally; that in 1990</p> <p>25 Public Act 72 came into law under Governor</p>
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<p>1 A. No.</p> <p>2 Q. Did you review any documents to prepare for today's</p> <p>3 deposition?</p> <p>4 A. Yes.</p> <p>5 Q. And what documents did you review?</p> <p>6 MS. NELSON: Objection. That's privileged</p> <p>7 and work product.</p> <p>8 MS. LEVINE: Are you directing the witness</p> <p>9 not to answer?</p> <p>10 MS. NELSON: Yes.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Was anybody else present at any of the meetings that</p> <p>13 you had to prepare for the deposition besides you</p> <p>14 and your counsel?</p> <p>15 A. No.</p> <p>16 Q. Is it your understanding that Kevyn Orr was</p> <p>17 appointed emergency manager effective March 28,</p> <p>18 2013?</p> <p>19 A. I don't recall the specific date, but it sounds like</p> <p>20 you have that.</p> <p>21 Q. Do you recall whether or not Kevyn Orr was appointed</p> <p>22 in or around March of 2013?</p> <p>23 A. Yes.</p> <p>24 Q. Is it your understanding that PA 436 became</p> <p>25 effective in or around March of 2013?</p>	<p>1 Blanchard. That was an emergency manager law that</p> <p>2 was in effect for a very long time and had been</p> <p>3 utilized by several prior governors.</p> <p>4 Q. So was --</p> <p>5 A. Then beyond that --</p> <p>6 Q. I'm sorry.</p> <p>7 A. Excuse me. Public Act 72 came into place and was</p> <p>8 used for quite a few years including my predecessor</p> <p>9 who had appointed a number of the emergency managers</p> <p>10 that were in place when I took office.</p> <p>11 Following Public Act 72, I thought it was</p> <p>12 important to make improvements to Public 72 because</p> <p>13 it had two major challenge points. One, emergency</p> <p>14 managers could be in place for too long, and there</p> <p>15 was no early warning system to help avoid ever</p> <p>16 needing an emergency manager.</p> <p>17 So Public Act 4 was an improvement on</p> <p>18 Public Act 72 to put in an early warning system</p> <p>19 again --</p> <p>20 Q. Let me -- I appreciate the commentary, but I only</p> <p>21 have an hour and a half. Let me ask a more pointed</p> <p>22 question. My mistake for not narrowing the</p> <p>23 question.</p> <p>24 A. Uh-huh.</p> <p>25 Q. Was PA 436 enacted in part to overcome what were</p>

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<p>1 perceived to be the deficiencies or the cause for</p> <p>2 the voter referendum with regard to PA 4?</p> <p>3 A. Plus additional improvements over what was Public</p> <p>4 Act 4 or Public Act 72.</p> <p>5 Q. Did you have any involvement in drafting PA 4?</p> <p>6 A. Yes.</p> <p>7 Q. Was the hope that PA 436 would avoid a referendum by</p> <p>8 the voters striking it down as well?</p> <p>9 A. No.</p> <p>10 Q. Is one of the differences between PA 4 and PA 436</p> <p>11 the treatment of vested pension benefits?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Is it your understanding that PA 436 prohibits any</p> <p>14 changes to vested pension benefits?</p> <p>15 A. Could you state that again because I'm not sure PA</p> <p>16 436 really references pension benefits in terms of</p> <p>17 what it covers.</p> <p>18 Q. Okay. Is it your understanding that PA 436</p> <p>19 authorizes the Governor, you, to authorize the</p> <p>20 emergency manager to file for bankruptcy protection</p> <p>21 under Chapter 9 of the Bankruptcy Code?</p> <p>22 A. Yes.</p> <p>23 Q. Is it your understanding that PA 436 among other</p> <p>24 things authorizes the Governor to place</p> <p>25 contingencies on the municipal proceeding under</p>	<p>1 include that as a contingency or limitation on your</p> <p>2 authorization to Kevyn Orr with regard to the</p> <p>3 Chapter 9 filing for Detroit?</p> <p>4 A. In terms of -- I didn't believe it was appropriate</p> <p>5 to put contingencies in it because, as I stated in</p> <p>6 my letter authorizing it, I believe that the process</p> <p>7 is required to be a legal process, which would</p> <p>8 address any legal questions through the bankruptcy</p> <p>9 process, either through the plan or the judge's</p> <p>10 review of the plan.</p> <p>11 Q. So is it your understanding that any limitation on</p> <p>12 the ability to impair or change vested pension</p> <p>13 benefits under state law would also apply to the</p> <p>14 Chapter 9 process?</p> <p>15 A. That's starting to get into legal opinions, and I</p> <p>16 thought it was best to leave to the judicial branch,</p> <p>17 particularly a bankruptcy judge.</p> <p>18 Q. I'm actually asking you what your understanding is.</p> <p>19 A. My understanding is that would be resolved through</p> <p>20 the bankruptcy process with the bankruptcy judge.</p> <p>21 Q. Did you take an oath of office when you became</p> <p>22 Governor?</p> <p>23 A. Yes.</p> <p>24 Q. Wasn't part of that oath to uphold the law?</p> <p>25 A. It was to uphold the Constitutions of Michigan and</p>
Page 30	Page 32
<p>1 Chapter 9?</p> <p>2 A. Yes.</p> <p>3 Q. Is it your understanding as we sit here today that</p> <p>4 one of the challenges to Detroit's Chapter 9</p> <p>5 bankruptcy filing is that it was filed without</p> <p>6 imposing as a condition a prohibition against</p> <p>7 modifying the existing pension benefits?</p> <p>8 A. Yes. I understand that's one of the elements of</p> <p>9 objections.</p> <p>10 Q. Is it your understanding that Article 9 Section 24</p> <p>11 of the Michigan Constitution prohibits tampering</p> <p>12 with the vested pension benefits?</p> <p>13 A. That's not my understanding of what the Constitution</p> <p>14 says. It does not literally say that.</p> <p>15 Q. What's your understanding of what the Constitution</p> <p>16 says with regard to vested pension benefits?</p> <p>17 A. It talks about accrued financial benefits from the</p> <p>18 State or a political subdivision being treated as</p> <p>19 contractual obligations, and in that context they</p> <p>20 shouldn't be impaired or diminished, which is</p> <p>21 different than what you stated.</p> <p>22 Q. Did you include -- using your definition, did you</p> <p>23 include that limitation in -- let me ask this</p> <p>24 differently.</p> <p>25 Using your statement, why didn't you</p>	<p>1 the United States.</p> <p>2 Q. Isn't this a provision of the Constitution of</p> <p>3 Michigan?</p> <p>4 A. And it also involves the Constitution of the United</p> <p>5 States when you're talking Chapter 9 bankruptcy, and</p> <p>6 I thought it best to leave to a judge, the judicial</p> <p>7 branch, to make a determination of a legal question.</p> <p>8 Q. When you signed the authorization letter, were you</p> <p>9 concerned about how the pension issue would</p> <p>10 ultimately get resolved through the Chapter 9</p> <p>11 process?</p> <p>12 A. It involved citizens of the State of Michigan, so</p> <p>13 yes.</p> <p>14 Q. Did you have any involvement in the selection of</p> <p>15 Kevyn Orr as emergency manager or emergency</p> <p>16 financial manager for Detroit?</p> <p>17 A. Yes.</p> <p>18 Q. When did the emergency manager or the emergency</p> <p>19 financial manager process that resulted in Kevyn</p> <p>20 Orr's selection begin?</p> <p>21 A. You can argue that began sometime back in 2011. It</p> <p>22 was a continuation of a process that goes back to a</p> <p>23 preliminary review that started in 2011, that went</p> <p>24 to a review team in 2012, that resulted in a consent</p> <p>25 agreement in early 2012. It continued throughout</p>

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<p>1 that year.</p> <p>2 When it was clear the consent agreement</p> <p>3 wasn't working, there was a subsequent review</p> <p>4 started in December of late 2012. The review team</p> <p>5 came up with a determination that there's a</p> <p>6 financial emergency without a sufficient plan. I</p> <p>7 agreed with that conclusion. There was then a</p> <p>8 hearing and a review process of that. That was</p> <p>9 appropriately done.</p> <p>10 I reaffirmed my review after receiving a</p> <p>11 report that concluded the same measure, that there</p> <p>12 was a financial emergency without a sufficient plan.</p> <p>13 And given that circumstance, then we had a need for</p> <p>14 an emergency manager.</p> <p>15 Q. Okay. So the last step in that process, was that</p> <p>16 the point at which you were interviewing candidates</p> <p>17 that resulted in the selection of Kevyn Orr?</p> <p>18 A. We started some -- the interview process prior to</p> <p>19 that to be prepared as a contingency in case that</p> <p>20 was the outcome of the review and the hearing</p> <p>21 process.</p> <p>22 Q. Were you involved personally in that selection</p> <p>23 process?</p> <p>24 A. Yes.</p> <p>25 Q. Who else was involved with you?</p>	<p>1 Q. Were you looking at residency?</p> <p>2 A. Not necessarily residency but familiarity with</p> <p>3 Detroit.</p> <p>4 Q. Did you take into account political affiliations?</p> <p>5 A. No.</p> <p>6 Q. Race?</p> <p>7 A. Again, that would be a factor that could be of some</p> <p>8 consideration.</p> <p>9 Q. Did you take into account any history of political</p> <p>10 party ties, political involvement or political</p> <p>11 appointments?</p> <p>12 A. What I would say, those would be viewed as</p> <p>13 negatives.</p> <p>14 Q. Did you take into account any municipal</p> <p>15 redevelopment background?</p> <p>16 A. In terms of restructuring or having municipal</p> <p>17 experience, that would be a positive.</p> <p>18 Q. Would that also include municipal budgeting or</p> <p>19 financial planning?</p> <p>20 A. It could.</p> <p>21 Q. Did you take into account any land use or zoning</p> <p>22 experience?</p> <p>23 A. We didn't get to that degree of specificity, as I</p> <p>24 recall.</p> <p>25 Q. Were there in-person interviews in connection with</p>
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<p>1 A. Rich Baird and several other people from the staff.</p> <p>2 The Mayor of Detroit was involved in the process.</p> <p>3 Q. Mayor Bing was involved?</p> <p>4 A. Yes.</p> <p>5 Q. Was Mr. Dillon involved?</p> <p>6 A. Yes.</p> <p>7 Q. Was your chief of staff involved?</p> <p>8 A. Yes.</p> <p>9 Q. Did you rely on any outside consultants, bankruptcy</p> <p>10 attorneys, financial advisors in making this</p> <p>11 decision also?</p> <p>12 A. I didn't personally during that process.</p> <p>13 Q. Did you establish a list of criteria or</p> <p>14 qualifications that you were looking for that you'd</p> <p>15 think favorably upon in making the selection as to</p> <p>16 who should be the emergency manager for Detroit?</p> <p>17 A. There was criteria we discussed to go through this</p> <p>18 process.</p> <p>19 Q. Did that criteria include familiarity with</p> <p>20 bankruptcy?</p> <p>21 A. It wasn't necessarily required. It could be viewed</p> <p>22 as a positive and not in the context of bankruptcy</p> <p>23 but bankruptcy and restructuring experience.</p> <p>24 Q. Did you view as a positive ties to Detroit?</p> <p>25 A. Yes.</p>	<p>1 the selection process that resulted in the selection</p> <p>2 of Kevyn Orr?</p> <p>3 A. Yes.</p> <p>4 Q. Who ran that process for you?</p> <p>5 A. Rich Baird.</p> <p>6 Q. And were you personally involved in the in-person</p> <p>7 interviews?</p> <p>8 A. Some.</p> <p>9 Q. Did you personally interview Kevyn Orr?</p> <p>10 A. Yes.</p> <p>11 Q. Where did that interview take place?</p> <p>12 A. I met with him more than once. I believe -- I don't</p> <p>13 recall specifically which location.</p> <p>14 Q. Was there a list or a slate of candidates that you</p> <p>15 personally interviewed for the emergency manager</p> <p>16 position?</p> <p>17 A. I interviewed more than one candidate in person.</p> <p>18 Q. How many candidates did you interview in person?</p> <p>19 A. I recall two for sure.</p> <p>20 Q. Were there more than two?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Was Kevyn Orr a candidate before Jones Day was</p> <p>23 interviewed as counsel for Detroit?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Was he asked to be -- to consider the emergency</p>

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<p>1 manager position during the Jones Day interview?</p> <p>2 A. I wasn't part of the Jones Day interview process.</p> <p>3 Q. No. My question, was it your understanding that he</p> <p>4 was asked to consider the emergency manager position</p> <p>5 during the Jones Day interview?</p> <p>6 A. Again, I couldn't speak to a process that I wasn't a</p> <p>7 participant in.</p> <p>8 Q. Do you know if he was offered by Jones Day as a</p> <p>9 candidate?</p> <p>10 A. He was not offered by Jones Day as a candidate. We</p> <p>11 asked permission if we could talk to Kevyn Orr.</p> <p>12 Q. Why in your mind was he better than the other</p> <p>13 candidates you were considering?</p> <p>14 A. That was an extensive process. What I would say is</p> <p>15 a number of candidates sort of withdrew their</p> <p>16 interest in participation also during this process.</p> <p>17 But I think Kevyn Orr had very strong</p> <p>18 criteria and a very strong background in terms of he</p> <p>19 had ties to Michigan and Detroit both in terms of</p> <p>20 family and school, he had extensive experience in</p> <p>21 restructuring and bankruptcy, and he had very fine</p> <p>22 communication skills.</p> <p>23 Q. Isn't it true that Kevyn Orr also expressed a</p> <p>24 hesitancy about accepting a position as emergency</p> <p>25 manager?</p>	<p>1 His experience with Chrysler I thought was</p> <p>2 very helpful in terms of dealerships, of</p> <p>3 understanding how to turn around a situation and see</p> <p>4 it be successful.</p> <p>5 Q. When did you make the final decision on Kevyn Orr?</p> <p>6 A. I didn't make the final decision. I recommended</p> <p>7 someone. The decision was made by the Emergency</p> <p>8 Loan Board.</p> <p>9 Q. Did anybody else recommend Kevyn Orr to the</p> <p>10 Emergency Loan Board?</p> <p>11 A. Well, I think some of the other people as part of</p> <p>12 the interview process probably did, but I think I</p> <p>13 was the one really making the recommendation.</p> <p>14 Q. Were you involved in the decision to retain Jones</p> <p>15 Day as restructuring attorneys to the City?</p> <p>16 A. That was a decision by the City of Detroit.</p> <p>17 Q. Try again. Were you involved in the decision to</p> <p>18 retain Jones Day as restructuring attorneys for the</p> <p>19 City?</p> <p>20 A. No.</p> <p>21 Q. Was Mr. Baird, Mr. Dillon or any other State</p> <p>22 official involved in the interview process or the</p> <p>23 decision-making process with regard to the retention</p> <p>24 of Jones Day by the City of Detroit?</p> <p>25 A. I don't know.</p>
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<p>1 A. That would be speculative.</p> <p>2 Q. Did he ever express to you a concern that he was</p> <p>3 perhaps uncertain about accepting the position of</p> <p>4 emergency manager if it was offered to him?</p> <p>5 A. I would say -- I wouldn't -- I can't speak for</p> <p>6 Kevyn. I think this is one of the most challenging</p> <p>7 positions, to be emergency manager, in the United</p> <p>8 States, and I think that most people would have some</p> <p>9 degree of concern about taking this position.</p> <p>10 Q. While he was grappling with that decision, did you</p> <p>11 personally reach out to him and have any</p> <p>12 conversations with him with regard to why you wanted</p> <p>13 him to take the position?</p> <p>14 A. I had several discussions with Kevyn about the</p> <p>15 challenges of this position. And, to be open, I</p> <p>16 made quite clear to him that I viewed this as one of</p> <p>17 the most challenging positions in our country.</p> <p>18 Q. Did you indicate to him that you thought it was</p> <p>19 important that he accept because of his bankruptcy</p> <p>20 experience?</p> <p>21 A. In terms of emphasizing his bankruptcy experience as</p> <p>22 a reason to do this, no. I viewed it as his overall</p> <p>23 experience in terms of being a person dealing with</p> <p>24 turnarounds, restructuring and bankruptcy was very</p> <p>25 relevant to this situation.</p>	<p>1 Q. From June 2012 through the present, does Jones Day</p> <p>2 provide any services or is it retained or an</p> <p>3 approved attorney for the State?</p> <p>4 A. I don't know. My understanding is Jones Day's</p> <p>5 relationship is with the City of Detroit.</p> <p>6 Q. Did you ever consider disqualifying either Jones Day</p> <p>7 or Kevyn Orr because Kevyn Orr was a partner at</p> <p>8 Jones Day?</p> <p>9 A. They were separate processes. That the City of</p> <p>10 Detroit was making a determination to retain Jones</p> <p>11 Day, and they were making that through their own</p> <p>12 decision-making processes.</p> <p>13 We were looking for candidates for</p> <p>14 emergency manager, and we specifically asked</p> <p>15 permission if we could contact Kevyn Orr and have</p> <p>16 that discussion. So I viewed them as separate</p> <p>17 discussions.</p> <p>18 Q. Did you ever consider that the close relationship</p> <p>19 between Kevyn Orr and Jones Day created a conflict</p> <p>20 or appearance of conflict?</p> <p>21 A. Kevyn Orr, part of the requirement was is he</p> <p>22 resigned as a partner and severed his ties with the</p> <p>23 firm as part of becoming emergency manager to avoid</p> <p>24 any conflict of interest.</p> <p>25 Q. Well, were you concerned that he might be</p>

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<p>1 deferential to his partners or recent former 2 partners at Jones Day?</p> <p>3 A. No. Because, in fact, the City of Detroit made the 4 determination to hire Jones Day, and they went 5 through with that process, and that was a separate 6 independent process that I believe actually occurred 7 prior to Kevyn Orr joining the City of Detroit as 8 emergency manager.</p> <p>9 Q. Did you consider whether it would be difficult for 10 Mr. Orr to favor the interests of the City over the 11 interests of Jones Day?</p> <p>12 A. I don't understand your question because I don't 13 understand why Jones Day would be in conflict with 14 the City of Detroit. They're representing the City 15 of Detroit.</p> <p>16 Q. And aren't they being compensated by the City of 17 Detroit?</p> <p>18 A. They are being compensated by the City of Detroit.</p> <p>19 Q. Isn't there less of an appearance of conflict if it 20 had been a different law firm that had been retained 21 by the City of Detroit than Kevyn Orr's prior firm?</p> <p>22 A. And that's why it was important that he resigned and 23 severed all ties.</p> <p>24 Q. During the discussions that you had with Kevyn Orr 25 prior to the time that he was appointed as emergency</p>	<p>1 emergency manager or at any time during the period 2 of time that he was appointed as emergency manager 3 on July 18th with regard to outsourcing?</p> <p>4 A. I don't recall with respect to the interview 5 process, and there has been discussions about 6 looking at providers of services in both internal 7 and external services for the City of Detroit since 8 that date.</p> <p>9 Q. For that same period of time, during the interview 10 process and up to and including July 18th or 19th, 11 did you have any conversation with Kevyn Orr with 12 regard to selling or monetizing assets such as the 13 art, Belle Isle and water and sewer and other assets 14 of Detroit?</p> <p>15 A. Those discussions would have been subject to 16 attorney-client privilege.</p> <p>17 Q. Is it your understanding that the sale of assets are 18 one of the things that are under consideration in 19 connection with the restructuring plan that Kevyn 20 Orr proposed during June of 2013?</p> <p>21 A. I don't recall that portion of the proposal.</p> <p>22 Q. What's your view on monetizing these assets as part 23 of a restructuring plan including the art, Belle 24 Isle and water and sewer and some of the other 25 assets of Detroit?</p>
Page 42	Page 44
<p>1 manager or after he was appointed as emergency 2 manager but before July 18th, did you ever discuss 3 with Kevyn Orr outsourcing for the City of Detroit?</p> <p>4 A. Could you explain what you mean by outsourcing?</p> <p>5 Q. As part of the business plan for the City of 6 Detroit, the City of Detroit is looking at -- 7 potentially looking at outsourcing some of the 8 services that are currently performed by City 9 employees; is that correct?</p> <p>10 A. They're looking at the most efficient ways to 11 deliver services to the citizens of Detroit.</p> <p>12 Q. Is that yes?</p> <p>13 A. That would include that. In terms of looking at 14 other alternatives, some of those were outlined, in 15 fact, during the consent agreement in terms of 16 looking at opportunities such as having the Detroit 17 Economic Growth Corporation handle the planning and 18 zoning activities of the City of Detroit, and that 19 was done in the context of the Mayor and the City 20 Council approving that consent agreement.</p> <p>21 Q. I'm going to try again.</p> <p>22 Did you have any conversations with Kevyn 23 Orr prior to the time that he was appoint -- prior 24 to the time that he was -- during the interview 25 process, prior to the time that he was appointed as</p>	<p>1 A. Again, that's a hypothetical discussion because it 2 would really come down to what's presented in the 3 plan of adjustment within the context of the 4 bankruptcy court, and it hasn't been done at this 5 point.</p> <p>6 Q. Well, I'm asking your view of whether or not those 7 items should be on the table in connection with the 8 structuring of that plan?</p> <p>9 A. I view those as primarily Kevyn Orr's decisions 10 because he's the emergency manager for the City of 11 Detroit.</p> <p>12 Q. During the interview process, prior to Kevyn Orr's 13 selection but during the period of time you were 14 talking to him, did you ever express a view that 15 vested pension benefits should not be modified by 16 the emergency manager for the City of Detroit?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you have discussions prior to the time that 19 Kevyn Orr was selected with regard to your views 20 about whether or not vested pension benefits should 21 be modified?</p> <p>22 A. I think that's just what -- what's different than 23 the prior question?</p> <p>24 Q. Are you saying you don't recall?</p> <p>25 A. I don't recall.</p>

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<p>1 Q. After the time that Kevyn Orr was engaged but before 2 July 18th, did you have any conversations with Kevyn 3 Orr with regard to your views on whether vested 4 pension benefits should be modified or not modified 5 as part of a restructuring for Detroit?</p> <p>6 A. Those would have been subject to attorney-client 7 privilege.</p> <p>8 Q. As we sit here today, what is your view of whether 9 vested pension benefits should be modified or not 10 modified as a result of a restructuring or plan of 11 adjustment for Detroit?</p> <p>12 A. I view that that's part of the bankruptcy process. 13 Those are not my decisions to make. There's a plan 14 of adjustment that will be presented by the City, 15 assuming Chapter 9 goes forward, and that would be 16 adjudicated by Judge Rhodes.</p> <p>17 Q. So is it your testimony today that you do not have a 18 view?</p> <p>19 A. I would -- I'm not a decisionmaker in that process 20 with respect to deciding that the plan would be 21 adopted or not, and there has not been a plan even 22 presented at this point in time, so anything else 23 would be speculative.</p> <p>24 Q. I'm asking you your view as to whether as part of 25 that process vested pension benefits should be</p>	<p>1 A. The proposal was an effort to go talk to creditors. 2 It wasn't a plan of adjustment. It was simply a 3 document to say here's a beginning point to have 4 mutual negotiations over issues. That would have to 5 be consensual to arrive at a conclusion.</p> <p>6 Q. At any time during the interview process for Kevyn 7 Orr did you discuss with Kevyn Orr the potential for 8 federal assistance in order to assist Detroit with 9 its restructuring efforts?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you believe it would be appropriate to seek 12 federal assistance to assist Detroit with its 13 restructuring efforts?</p> <p>14 A. I'm publicly on the record saying that I didn't 15 believe it would be appropriate to go ask the 16 federal government for a bailout with respect to the 17 debts of the City of Detroit; that I thought it 18 would be appropriate to say are there normal 19 assistance procedures available to help improve 20 services to citizens.</p> <p>21 Q. Have you assisted Kevyn Orr in going after federal 22 assistance in the places where you've identified it 23 as appropriate?</p> <p>24 A. I have been part of that process, not only with 25 Kevyn Orr but with Mayor Bing.</p>
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<p>1 modified or should not be modified?</p> <p>2 A. Again, I view those as primarily legal questions.</p> <p>3 Q. Did you review the June 14 proposal made by Kevyn 4 Orr before the June 14 meeting with the creditors of 5 Detroit?</p> <p>6 A. I'd seen drafts.</p> <p>7 Q. Did you approve it?</p> <p>8 A. It wasn't mine to approve or not approve. That was 9 a decision of Kevyn Orr and the City of Detroit.</p> <p>10 Q. Did you express a view about it before it was 11 presented?</p> <p>12 A. I don't recall. Not any significant discussions, in 13 my view.</p> <p>14 Q. Did you tell them not to present any aspect of it?</p> <p>15 A. I don't recall.</p> <p>16 Q. Did you participate at all in the development of the 17 proposal?</p> <p>18 A. Those discussions would have been subject to 19 attorney-client privilege in terms of any meetings.</p> <p>20 Q. I'm not asking what was said. I'm asking if you 21 participated in the development of the proposal.</p> <p>22 A. Again, I saw early drafts. I don't -- I wouldn't 23 describe that as developing the proposal.</p> <p>24 Q. Is it your understanding that the proposal complies 25 with the Michigan Constitution?</p>	<p>1 Q. Specifically, how have you been part of that 2 process?</p> <p>3 A. Well, in fact, we just had a press conference where 4 several cabinet members came to Detroit along with 5 Gene Sperling from the Whitehouse and they announced 6 a package of federal programs. I was present 7 through that process.</p> <p>8 Q. Was Mayor Bing present through that process as well?</p> <p>9 A. Yes.</p> <p>10 Q. And Kevyn Orr?</p> <p>11 A. Yes.</p> <p>12 Q. Do you believe there should be state assistance with 13 regard to the restructuring plan for Detroit?</p> <p>14 A. We have been providing assistance with improved 15 services to the citizens.</p> <p>16 Q. Give some examples of some of that assistance.</p> <p>17 A. Sure. We've been active on the blight front in 18 terms of dealing with removing structures. We've 19 put significant resources towards that.</p> <p>20 Another one is we did the new Detroit 21 Detention Center. The Department of Corrections did 22 that in partnership with the Detroit Police 23 Department.</p> <p>24 Q. Have you looked at any avenues to use state 25 assistance to deal with the pension underfunding</p>

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<p>1 issue?</p> <p>2 A. Not at this point in time.</p> <p>3 Q. During the interview process with Kevyn Orr, did you</p> <p>4 discuss the potential for a Chapter 9 filing?</p> <p>5 A. In terms of those discussions, what I would say is</p> <p>6 as a last resort we had to be aware that Chapter 9</p> <p>7 might be the only available option.</p> <p>8 Q. Did you discuss with Kevyn Orr whether vested</p> <p>9 pension benefits could be reduced or modified in</p> <p>10 Chapter 9?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you recall any discussions with Kevyn Orr during</p> <p>13 the interview process with regard to vested pension</p> <p>14 benefits?</p> <p>15 A. I don't recall.</p> <p>16 Q. During the period of time that you were interviewing</p> <p>17 Kevyn Orr for emergency manager, did you have any</p> <p>18 discussions with Mayor Bing with regard to your</p> <p>19 proposed selection of Kevyn Orr?</p> <p>20 A. Yes.</p> <p>21 Q. What was discussed?</p> <p>22 A. In terms of working relationships and did Mayor Bing</p> <p>23 think Kevyn Orr could be a good candidate to be</p> <p>24 emergency manager.</p> <p>25 Q. And what did Mayor Bing say to you?</p>	<p>1 MS. LEVINE: Thank you, Governor.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 VIDEO TECHNICIAN: Take a break, switch?</p> <p>4 Off the record 9:31 a.m.</p> <p>5 (A brief recess was taken.)</p> <p>6</p> <p>7 (Deposition Exhibit 1 was marked.)</p> <p>8</p> <p>9 VIDEO TECHNICIAN: Go back on the record at</p> <p>10 9:40 a.m.</p> <p>11 EXAMINATION</p> <p>12 BY MR. DeCHIARA:</p> <p>13 Q. Good morning, Governor. My name is Peter DeChiara.</p> <p>14 I'm an attorney with the law firm of Cohen, Weiss</p> <p>15 and Simon LLP. We represent the United Auto Workers</p> <p>16 International Union in this proceeding.</p> <p>17 I'd like to show you a document that I've</p> <p>18 asked the court reporter to mark as Exhibit Number</p> <p>19 1. It's -- I'll identify it for the record. It's a</p> <p>20 July 16th, 2013 letter that was from Emergency</p> <p>21 Manager Kevyn Orr to you and to Treasurer Andrew</p> <p>22 Dillon.</p> <p>23 You're familiar with this letter; are you</p> <p>24 not?</p> <p>25 A. Yes.</p>
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<p>1 A. I didn't speak to him specifically after that, but I</p> <p>2 helped talk to him during that process. My</p> <p>3 understanding was is he was supportive of Kevyn Orr.</p> <p>4 Q. Were you personally involved in those discussions or</p> <p>5 was it somebody on your behalf?</p> <p>6 A. In terms of I had spoken to Mayor Bing about Kevyn</p> <p>7 Orr being part of the process and some of the</p> <p>8 feedback that he had early in the process, but by</p> <p>9 the end of the process there were other people also</p> <p>10 participating in that such as Rich Baird.</p> <p>11 Q. Did you meet with Mayor Bing personally?</p> <p>12 A. I spoke to him on the phone, as I recall.</p> <p>13 Q. Prior to the time that you selected Kevyn Orr, did</p> <p>14 you meet with any of the unions for the City of</p> <p>15 Detroit to solicit their input with regard to the</p> <p>16 selection of the emergency manager?</p> <p>17 A. No.</p> <p>18 Q. Did you speak with any retiree groups?</p> <p>19 A. No.</p> <p>20 Q. Did you speak to any of the City's so-called</p> <p>21 Wall Street creditors, bond holders, larger</p> <p>22 creditors?</p> <p>23 A. No.</p> <p>24 Q. Did you speak to the pension funds?</p> <p>25 A. No.</p>	<p>1 Q. I'd like you to turn to the second page of the</p> <p>2 letter and in particular the bottom of the letter.</p> <p>3 The third line from the bottom in the middle of the</p> <p>4 line there's a sentence that I'll read out loud. It</p> <p>5 says "The City has over \$18 billion in accrued</p> <p>6 obligations, including: (a) 3.5 billion in</p> <p>7 underfunding pension liabilities based on the most</p> <p>8 recent actuarial analysis;..."</p> <p>9 I'll finish the quote there. The sentence</p> <p>10 goes on, and you can feel free to read the rest of</p> <p>11 the sentence, but I just want to ask you about the</p> <p>12 portion that I quoted.</p> <p>13 When you received this July 16th letter</p> <p>14 from Mr. Orr, did you read it?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And did you read this line that I just</p> <p>17 quoted?</p> <p>18 A. Yes.</p> <p>19 Q. And did you take it as true that the City had over</p> <p>20 \$18 billion in accrued obligations, including 3.5</p> <p>21 billion in underfunding pension liabilities?</p> <p>22 A. The answer is yes, but it was also in the context of</p> <p>23 the most recent evaluation, to say that there was an</p> <p>24 open question did there need to be more evaluations</p> <p>25 or additional work done.</p>

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<p>1 Q. I'm sorry. Your answer is yes, you did take that 2 statement as true?</p> <p>3 A. Yes. Uh-huh.</p> <p>4 Q. Okay. Did you undertake any independent 5 investigation or cause any independent investigation 6 to be undertaken to determine whether the statement 7 that I quoted was true?</p> <p>8 A. I also looked back to prior review team reports 9 which in many cases had very similar information.</p> <p>10 Q. Did -- were you aware that at the time this 11 July 16th letter was written, the pension funds 12 themselves were disputing the statement that the 13 amount of underfunding of the pension liabilities 14 was 3.5 billion? Were you aware of that fact?</p> <p>15 A. I was aware that people were disputing it in terms 16 of both being higher or lower.</p> <p>17 Q. Were you aware that the pension funds themselves 18 were saying the number was lower?</p> <p>19 A. I don't recall that.</p> <p>20 Q. Did Mr. Orr ever tell you that?</p> <p>21 A. I don't recall.</p> <p>22 Q. He might have told you that?</p> <p>23 A. Again, I don't recall.</p> <p>24 Q. Okay. Do you think it was important in your 25 determination as to whether to authorize Detroit to</p>	<p>1 Q. Am I correct, Your Honor? I mean Governor.</p> <p>2 A. The overall number would be lower. In terms of 3 context, though, one of the things I looked at was 4 prior reports that showed the current -- the City of 5 Detroit was paying \$.38 on the dollar towards 6 historic or legacy liabilities; that there were 7 projections to show that by 2017 that number would 8 raise to \$.60 on the dollar.</p> <p>9 Q. Do you know whether -- at the time that you received 10 the July 16th letter from Mr. Orr, do you know 11 whether Mr. Orr or his staff at that time had 12 undertaken an analysis of the assets of the City of 13 Detroit to see what assets could be monetized to 14 address the City's financial problems?</p> <p>15 A. There was -- it was clear that there was a need to 16 do a survey of assets and valuation of the assets of 17 the City whether those were to be monetized or not, 18 but there was a need to do an inventory of assets 19 and value those assets.</p> <p>20 Q. My question is at the time you received the 21 July 16th letter, were you aware of whether Mr. Orr 22 or his staff had undertaken an analysis of the 23 assets of the City of Detroit to see which might be 24 monetized?</p> <p>25 A. My understanding was a lot of that work still needed</p>
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<p>1 file for bankruptcy to know the correct amount of 2 the City's underfunded pension liabilities? Did you 3 think that was important?</p> <p>4 A. I think that was one element of a much larger 5 question.</p> <p>6 As you pointed out in the sentence, the 7 sentence talks about \$18 billion of liabilities.</p> <p>8 Q. But my question, Governor, is did you think at the 9 time you made your decision about whether or not to 10 authorize the Detroit bankruptcy filing that it was 11 important to know the amount of the City's 12 underfunded pension liabilities?</p> <p>13 A. I would say it was important to know that there was 14 an underfunded amount of an order of magnitude in 15 relationship to the \$18 billion. Again, people were 16 saying that number could be lower, it could be 17 higher, so I didn't assume that was necessarily the 18 exact number.</p> <p>19 But in the context of \$18 billion of 20 liabilities, there was clearly a problem that I 21 concurred with the recommendation.</p> <p>22 Q. Well, if the amount of the underfunded pension 23 liabilities had been lower, the overall accrued 24 obligations would have been lower as well, correct?</p> <p>25 A. One of the things I looked at --</p>	<p>1 to be done.</p> <p>2 Q. Okay. Did you think when you received the 3 July 16th, 2013 letter that it would be important to 4 know whether the City had assets that could be 5 monetized, and if so what those assets might be?</p> <p>6 Did you think that was something important 7 to know?</p> <p>8 A. Can you repeat that again?</p> <p>9 Q. Sure. At the time you received the July 16th, 2013 10 letter from Mr. Orr, did you think at that time that 11 it would be important to know whether the City had 12 assets that could be monetized? And when I say 13 important, I mean important in the context of your 14 making your decision on whether to authorize the 15 bankruptcy filing.</p> <p>16 A. I didn't view the valuation of assets being nearly 17 as relevant as understanding what the liabilities 18 were because the issue was were the liabilities so 19 large that there needed to be something done to 20 address them.</p> <p>21 Understanding that, again, we had a \$18 22 billion give or take kind of number that needed to 23 be addressed and that it would take some time to 24 understand what assets, what values they may have 25 and what might be available.</p>

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<p>1 Q. Have you ever been involved in a business, Governor 2 Snyder?</p> <p>3 A. Yes.</p> <p>4 Q. Isn't it true to assess the financial picture of a 5 business you need to know both the assets and the 6 liabilities of the business?</p> <p>7 A. This is a different situation in terms --</p> <p>8 Q. Could you answer my question?</p> <p>9 A. Yes.</p> <p>10 Q. The answer to my question is yes?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. At the time you received Mr. Orr's July 16th, 13 2013 letter, do you know whether Mr. Orr or his 14 staff had undertaken an analysis such that they knew 15 with specificity the City's cash flow?</p> <p>16 A. There had -- there was extensive work done doing 17 cash flow analysis of the City. Some of that work 18 was included in the proposal to creditors back in 19 June --</p> <p>20 Q. Okay.</p> <p>21 A. -- in addition to reports that had been provided 22 under his obligation as emergency manager.</p> <p>23 Q. But at the time that you received the July 16th, 24 2013 letter, do you know whether Mr. Orr or his 25 staff had done an analysis which allowed them to</p>	<p>1 A. Not that I recall.</p> <p>2 Q. Do you know whether a significant portion of 3 Detroit's unfunded pension liability is allocable to 4 the City's Water and Sewer Department?</p> <p>5 A. I'm not aware of that relationship.</p> <p>6 Q. Okay. Is that something that you think would be 7 relevant to a determination about whether or not the 8 City should pursue a bankruptcy?</p> <p>9 A. I haven't considered that as a question.</p> <p>10 Q. Okay. Let me now refer you to page six of 11 Exhibit 1, and at the bottom paragraph of the page 12 there's a reference to the June 14th creditor 13 proposal. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you were familiar with that proposal when 16 you received this letter on July 16th?</p> <p>17 A. Generally familiar. It's a 128-page document.</p> <p>18 Q. Okay.</p> <p>19</p> <p>20 (Deposition Exhibit 2 was marked.)</p> <p>21</p> <p>22 BY MR. DeCHIARA:</p> <p>23 Q. I'd like to mark as -- well, I've already marked as 24 Exhibit 2, and I'll ask you to identify what I'll 25 identify for the record as a July 18th, 2013 letter</p>
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<p>1 know with specificity the extent of the City's cash 2 flow?</p> <p>3 A. I believe they had.</p> <p>4 Q. Okay. Did you ever discuss that with Mr. Orr?</p> <p>5 A. That would be a matter of attorney-client privilege.</p> <p>6 Q. Well, whether it's a matter of attorney-client 7 privilege is a legal question, and you have counsel 8 here who can object if she believes that a question 9 infringes on the attorney-client privilege, so I 10 would ask you to answer the question.</p> <p>11 MS. NELSON: You can answer yes or no.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. DeCHIARA:</p> <p>14 Q. Yes, you did have discussions?</p> <p>15 A. Yeah.</p> <p>16 Q. And were those discussions -- were other people 17 present other than you and Mr. Orr in those 18 discussions?</p> <p>19 A. Yes.</p> <p>20 Q. Isn't it true you had one-on-one conversations with 21 Mr. Orr prior to the bankruptcy filing?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. In any of those one-on-one conversations with 24 Mr. Orr did you ever have a discussion of the City's 25 cash flow?</p>	<p>1 from you to Mr. Orr and Mr. Dillon.</p> <p>2 Is Exhibit 2 your response to what's been 3 marked as Exhibit 1?</p> <p>4 A. Yes.</p> <p>5</p> <p>6 (Deposition Exhibit 3 was marked.)</p> <p>7</p> <p>8 BY MR. DeCHIARA:</p> <p>9 Q. Governor, I've had the court reporter mark as 10 Exhibit 3 a document which bears the title City of 11 Detroit Proposal for Creditors, June 14th, 2013.</p> <p>12 Let me represent to you that this document 13 was attached to the Orr Declaration that was filed 14 in the bankruptcy proceeding as the City's proposal 15 for creditors.</p> <p>16 Let me -- did you see this document in any 17 prior form before it was made public on or about 18 June 14th, 2013?</p> <p>19 A. Yes.</p> <p>20 Q. And do you plan -- were you shown drafts of the 21 document?</p> <p>22 A. I'd seen a draft or so. I can't recall whether it 23 was one or more.</p> <p>24 Q. Okay. And who showed them to you?</p> <p>25 A. Again, I don't recall.</p>

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<p>1 Q. Okay. Did you comment on the draft?</p> <p>2 A. I generally reviewed it and just gave general</p> <p>3 feedback.</p> <p>4 Q. To whom did you give feedback?</p> <p>5 A. It would have been subject to attorney-client</p> <p>6 privilege.</p> <p>7 Q. Well, again, that's a legal question.</p> <p>8 A. Yeah, it would have been to Kevyn Orr.</p> <p>9 Q. To Kevyn Orr. Okay.</p> <p>10 A. Yeah.</p> <p>11 Q. How did you convey your comments to Kevyn Orr? Did</p> <p>12 you speak to him?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. By phone?</p> <p>15 A. I don't recall.</p> <p>16 Q. Okay. You don't recall whether it was by phone or</p> <p>17 in person?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Do you recall who if anyone else was present</p> <p>20 either on the phone or in person when you had those</p> <p>21 communications?</p> <p>22 A. There could have been several people including legal</p> <p>23 counsel.</p> <p>24 Q. Okay, but you don't know that for a fact; is that</p> <p>25 correct?</p>	<p>1 Q. Okay. Let me direct your attention -- strike that.</p> <p>2 Let me back up.</p> <p>3 Did you put your comments in writing to</p> <p>4 anyone -- your comments about the June 14th, 2013</p> <p>5 proposal, did you put your comments in writing to</p> <p>6 anyone whether by letter or email or phone text or</p> <p>7 in any other written format?</p> <p>8 A. I don't believe so. I don't believe so.</p> <p>9 Q. Let me now turn your attention to page 109 of</p> <p>10 Exhibit 3, and I'm going to in particular read the</p> <p>11 second line of the third bullet point from the</p> <p>12 bottom. It says "There must be significant cuts in</p> <p>13 accrued vested pension amounts for both active and</p> <p>14 currently retired persons."</p> <p>15 Were you aware that the proposal said this?</p> <p>16 A. I'm aware the proposal said that in the context that</p> <p>17 this was to be a negotiation and a mutual agreement</p> <p>18 between parties.</p> <p>19 Q. My only question was --</p> <p>20 A. Yeah.</p> <p>21 Q. -- were you aware that this proposal said this?</p> <p>22 A. Yes.</p> <p>23 Q. And you were aware that at the time that you signed</p> <p>24 what's been marked as Exhibit 2, the July 18th</p> <p>25 letter, you were aware that the proposal contained</p>
Page 62	Page 64
<p>1 A. I know there would have been other people including</p> <p>2 legal counsel.</p> <p>3 Q. So you're sure that -- well, let's talk about in</p> <p>4 the -- so the conversation you say may have been on</p> <p>5 the phone?</p> <p>6 A. Yeah.</p> <p>7 Q. Are you sure that while you were on the phone with</p> <p>8 Kevyn Orr speaking about the proposal for creditors</p> <p>9 that there were legal counsel on the phone?</p> <p>10 A. Yeah, I'm quite confident of that. Typically,</p> <p>11 again, almost every time or every time I recall</p> <p>12 there were a group of people, there was legal</p> <p>13 counsel present. The only time I met separately</p> <p>14 with Kevyn Orr was on subject matters that didn't</p> <p>15 relate to matters like this.</p> <p>16 Q. What did you tell Kevyn Orr when you spoke to him</p> <p>17 about the June 14th, 2013 proposal?</p> <p>18 MS. NELSON: Objection; attorney-client</p> <p>19 privilege.</p> <p>20 BY MR. DeCHIARA:</p> <p>21 Q. Are you refusing to answer the question, Governor?</p> <p>22 A. Yeah. There was counsel present.</p> <p>23 Q. All right. Just for the record, to be clear, you're</p> <p>24 refusing to answer the question?</p> <p>25 A. Yes.</p>	<p>1 the language I just read, correct?</p> <p>2 A. Yes.</p> <p>3 Q. So you were aware when you signed the July 18th,</p> <p>4 2013 letter that it was Kevyn Orr's view that there</p> <p>5 had to be significant cuts in accrued pension</p> <p>6 liabilities, correct?</p> <p>7 A. I would say it was Kevyn Orr putting a proposal out</p> <p>8 to parties to say he believed this was necessary to</p> <p>9 achieve an outcome, that they would need to agree to</p> <p>10 that.</p> <p>11 Q. I'm not sure that was responsive. Let me try that</p> <p>12 question again.</p> <p>13 A. Okay.</p> <p>14 Q. Isn't it correct that at the time that you signed</p> <p>15 your July 18th letter that you were aware that it</p> <p>16 was Kevyn Orr's position that there had to be</p> <p>17 significant cuts in accrued pension benefits?</p> <p>18 A. Yes.</p> <p>19 Q. Did you speak to Kevyn Orr about -- strike that.</p> <p>20 Did you agree with that position as of</p> <p>21 July 18th? And by the position I mean that there</p> <p>22 had to be significant cuts in accrued pension</p> <p>23 liabilities?</p> <p>24 A. The approval of my letter was not addressing that as</p> <p>25 an issue. It was about authorizing a bankruptcy.</p>

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<p>1 It doesn't say I agree with that or disagree with 2 that. It simply says I authorized it to go forward 3 where a plan would be presented to a judge that 4 could be the result of further negotiations, 5 mediations, all kinds of work that ultimately a 6 judge would decide. 7 Q. Okay. I'm not addressing your July 18th letter. 8 A. Yeah. 9 Q. I'm just pegging the question -- 10 A. Okay. 11 Q. -- by time frame as of July 18th. 12 A. Okay. 13 Q. So as of July 18th, did you share Mr. Orr's view 14 that there had to be significant cuts in pension 15 liabilities? 16 A. Based on the current situations with negotiations, 17 that continued to be the position that would be on 18 the table going into bankruptcy. 19 Q. Again, I'm not sure that was responsive. 20 A. Uh-huh. 21 Q. As of July 18th, 2013, did you share Mr. Orr's view 22 that whether through negotiation or other means that 23 there as an end result had to be significant cuts in 24 accrued pension liabilities? 25 A. I wouldn't use the word had to be but likely could</p>	<p>1 negotiation that would be satisfactory to the 2 parties involved. 3 That didn't happen in terms of that regard 4 but I still had hope to say that as you go through 5 the bankruptcy process I viewed it as likelihood 6 that there was less flexibility under the bankruptcy 7 process just because of the nature of federal 8 bankruptcy law than there probably was before. 9 Q. Was it your view that as of July 18th in the 10 bankruptcy one way or another accrued pension 11 liabilities would have to be reduced? 12 A. Based on the facts going into it, it was one of 13 those questions, as you said, there was a likelihood 14 of that happening. 15 Q. That's not my question. 16 A. Yes. Yeah, I believe there's a likelihood there 17 could be reductions in unfunded pension liabilities. 18 Q. Okay. I'm not asking -- 19 A. Yeah. 20 Q. Governor, I'm not asking you to predict the 21 likelihood of what might have happened. 22 A. Okay. 23 Q. I'm asking you whether you believed that in 24 bankruptcy there would have had to be one way or 25 another reductions in Detroit's accrued pension</p>
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<p>1 be. 2 Q. Okay. Well, Mr. Orr used the word "there must be". 3 A. Uh-huh. 4 Q. Did you share that view that there had to be? 5 A. Not necessarily. 6 Q. Okay. 7 A. Just as I said. 8 Q. Okay. So did you think about this issue as of -- or 9 as of the July 18th, 2013 time frame, had you given 10 thought to whether or not there had to be cuts to 11 accrued pension benefits? 12 A. I gave thought to the issue because I have concern 13 for the retirees, and that was why one of the 14 important questions in my view was to have a retiree 15 representative in the bankruptcy. 16 Q. And what was your -- since you said you gave thought 17 to it, can you articulate what your position was as 18 to whether or not there had to be cuts in accrued 19 pension liabilities? And I'm focusing on your views 20 on the matter as of July 18th, 2013. 21 A. My view going back prior to that is I had hoped 22 that there would be negotiations to resolve this 23 short of bankruptcy because bankruptcy was a last 24 resort; that I hoped that people could come to the 25 table and come up with a mutual understanding and</p>	<p>1 liabilities? 2 A. I would say it's not a hundred percent belief. 3 Q. But was it a less than 100 percent belief that there 4 had to be reductions? 5 A. Again, if you looked at the numbers, as we discussed 6 earlier, those are significant numbers, and it would 7 be hard to see how it could be a hundred percent. 8 Q. Let me -- did you discuss with anyone other than 9 your legal counsel and Mr. Orr whether there had to 10 be cuts to Detroit's accrued pension liability? 11 A. When you say other people, there would be people 12 from the administration in the meetings that we had. 13 Q. Who did you discuss that issue with? 14 A. There could be any number of people that would 15 include my chief of staff, Andy Dillon, and other 16 people of the administration. 17 Q. And what did you and Andy Dillon discuss on that 18 issue? 19 MS. NELSON: I'm going to object on the 20 grounds of attorney-client privilege. These 21 discussions occurred in the meetings with Mr. Orr 22 and his counsel. 23 MR. DeCHIARA: Well, there hasn't been 24 testimony to that effect. 25 MS. NELSON: He just said it.</p>

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<p>1 THE WITNESS: Yeah. I said those were 2 meetings -- in those same meetings. 3 BY MR. DeCHIARA: 4 Q. The discussions you had with Mr. Orr, were those in 5 the presence of legal counsel? 6 A. Yes. 7 Q. Did you have any discussions with Mr. -- I'm sorry, 8 the discussions you had with Mr. Dillon, were those 9 in the presence of legal counsel? 10 A. They were in the same meeting in terms of -- 11 Q. Did you have any discussions with Mr. Dillon outside 12 of the presence of legal counsel? 13 A. Mr. Dillon would on occasion bring forward ideas and 14 thoughts. 15 Q. On whether or not the pension liabilities had to be 16 cut? 17 A. On pensions in general. In terms of valuation and 18 pension plans. 19 Q. And did you discuss those with him? 20 A. I listened to him. 21 Q. Did you -- well, what did he say? What was his 22 views? 23 A. I don't recall all the details. 24 Q. Give me the best that you can recall. 25 A. Again, it was a question of them being underfunded</p>	<p>1 Q. Okay. 2 A. That's why I'm not trying to be difficult here. 3 It's more the -- 4 Q. I appreciate it, and I'm not suggesting you're 5 trying to be difficult, Governor. I appreciate your 6 effort. And I know I'm posing questions that, you 7 know, take careful response, so I'm not suggesting 8 you're being difficult. 9 But we spoke over each other, and I'm not 10 sure the record was clear so let me just try it one 11 more time. 12 Is it fair to characterize Mr. Dillon's 13 comments to you on the subject to say that he said 14 to you that he thought the pensions had to be cut 15 but that there should be alternatives that should be 16 explored in connection with the pensions? 17 A. Yes. 18 Q. And did you respond to him when he said that? 19 A. I thanked him for his confidence. 20 Q. Did you say anything more substantive than that? 21 Did you express your own view? 22 A. What I did is I appreciated him coming forward with 23 trying to solve problems and that I said I would 24 follow up. And my followup was to make sure that 25 his comments were shared in the broader meeting</p>
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<p>1 and were there other alternatives or other ways to 2 deal with this and being concerned about retirees. 3 Q. Did Mr. Dillon say that in his view the pension 4 liabilities had to be cut? 5 MS. NELSON: Outside of this meeting you 6 mean? 7 BY MR. DeCHIARA: 8 Q. Yeah, I'm talking about meetings outside of the 9 presence of legal counsel the Governor has testified 10 occurred. 11 A. He was trying to bring forward ideas and thoughts 12 about were there other alternatives. 13 Q. That's not my question. It's actually a yes or no 14 question. 15 Did Mr. Dillon express to you the view that 16 the pension liabilities had to be cut? 17 A. I don't recall in terms of all the pieces. Again, 18 in some ways yes, but also he was trying to be 19 creative in saying are there other options or 20 alternatives. 21 Q. Was he saying that the pension liabilities had to be 22 cut but that alternatives to doing it -- 23 A. Yeah. 24 Q. -- had to be explored? 25 A. It was more exploring alternatives.</p>	<p>1 context that we discussed earlier with Kevyn Orr, 2 other people and counsel. 3 Q. Did you -- are you aware that Attorney General Bill 4 Schuette has taken the position that -- 5 A. Schuette. 6 Q. Schuette, thank you. I'm not from Michigan so 7 please excuse my mispronunciation. Schuette. Let 8 me write that down. I'll just say the Attorney 9 General. 10 Are you aware that the Attorney General has 11 taken the position that the Michigan Constitution 12 prohibits the reduction of accrued pension 13 liability? 14 A. I was aware the Attorney General filed a brief on 15 pensions. 16 Q. Okay. Before he filed that brief, were you aware -- 17 well, do you know whether he had that position 18 before he filed the brief? 19 A. He contacted me before he filed the brief. 20 Q. How long before he filed the brief? 21 A. I don't -- it could have been a day, a few days. 22 Q. Okay. And did he before he -- did you speak to him 23 on that occasion? 24 A. Yes. 25 Q. Was it a telephone call?</p>

<p style="text-align: right;">Page 73</p> <p>1 A. Yes.</p> <p>2 Q. Who else was on the phone, if anyone?</p> <p>3 A. Just the two of us.</p> <p>4 Q. Okay. Before that phone call, did you speak to the</p> <p>5 Attorney General on any prior occasion about his</p> <p>6 position on whether the Michigan Constitution</p> <p>7 prohibited the cutting of pension benefits?</p> <p>8 A. I don't recall.</p> <p>9 Q. What was said in that phone call?</p> <p>10 A. I don't recall the specific exchange. The basic</p> <p>11 gist of the call was is he was looking to file a</p> <p>12 brief on this and he wanted to make sure I was aware</p> <p>13 of it, and I thanked him for that because I said</p> <p>14 you're exercising what you believe is appropriate as</p> <p>15 a constitutional officer of the State of Michigan; I</p> <p>16 appreciate you sharing that with you [verbatim], and</p> <p>17 you should follow through with your duties just as</p> <p>18 I'm responsible for following through with my</p> <p>19 duties.</p> <p>20 Q. Do you believe that the opinion of the Attorney</p> <p>21 General of the State of Michigan on questions of</p> <p>22 Michigan state law are entitled to weight?</p> <p>23 A. Well, that's a separate issue. This was not an</p> <p>24 opinion of the Attorney General. This was a brief</p> <p>25 filed in a case.</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. I'm not sure you answered my question.</p> <p>2 A. Yeah.</p> <p>3 Q. Do you think the view of the Attorney General of the</p> <p>4 State of Michigan on questions of Michigan state law</p> <p>5 should be accorded weight?</p> <p>6 A. Again, that's a very subjective thing. I don't view</p> <p>7 them as being the same as Michigan law.</p> <p>8 Q. No, I'm not suggesting they are. I'm asking in your</p> <p>9 view should they be accorded weight?</p> <p>10 A. Again, I would just hold out I have respect for the</p> <p>11 Attorney General and their work product. They're</p> <p>12 representing me here today.</p> <p>13 MR. DeCHIARA: Let me ask the court</p> <p>14 reporter to mark as Exhibit 4 an article that</p> <p>15 appeared in the Detroit Free Press on July 29th,</p> <p>16 2013.</p> <p>17</p> <p>18 (Deposition Exhibit 4 was marked.)</p> <p>19</p> <p>20 BY MR. DeCHIARA:</p> <p>21 Q. And in the middle of the article that's Exhibit 4,</p> <p>22 there's a -- the sixth paragraph, there's a quote at</p> <p>23 the end of the paragraph. And the article purports</p> <p>24 to quote the Attorney General as saying "The</p> <p>25 Michigan Constitution is crystal clear on this.</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. Well, if you could answer my question, Governor.</p> <p>2 MS. NELSON: Well, I'm going to object</p> <p>3 because an Attorney General opinion has very</p> <p>4 specific meaning here in Michigan under state law,</p> <p>5 and that's what you're asking is an opinion, and</p> <p>6 that's not what this is.</p> <p>7 MR. DeCHIARA: Okay. Okay. I'm not --</p> <p>8 when I use opinion I don't mean it in the sense of a</p> <p>9 formal legal opinion.</p> <p>10 THE WITNESS: Oh, that's why I take it when</p> <p>11 you said that --</p> <p>12 MR. DeCHIARA: I'm sorry, miscommunication.</p> <p>13 It's miscommunication.</p> <p>14 THE WITNESS: Because he does do formal</p> <p>15 opinions.</p> <p>16 BY MR. DeCHIARA:</p> <p>17 Q. Okay. Let me use the word view. Okay?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you believe that the view of the Attorney General</p> <p>20 on questions of interpretation of Michigan state law</p> <p>21 are -- should be accorded weight?</p> <p>22 A. In terms of -- I respect the Attorney General. Many</p> <p>23 parties submit briefs, and I assume The Court will</p> <p>24 make the decision as to how to weight the brief of</p> <p>25 the Attorney General.</p>	<p style="text-align: right;">Page 76</p> <p>1 Article 9 Section 24 says pensions may not be</p> <p>2 impaired, and I will fight to defend the</p> <p>3 Constitution and the citizens it protects."</p> <p>4 Governor, are you prepared to fight to</p> <p>5 defend the Constitution and the citizens it</p> <p>6 protects?</p> <p>7 A. I do that every day.</p> <p>8 Q. Are you prepared to revoke your authorization for</p> <p>9 the bankruptcy filing of the City of Detroit?</p> <p>10 A. I don't know why I would do that.</p> <p>11 Q. Let me refer you back to Exhibit 1, and in -- it's</p> <p>12 the July 16th letter, and in particular let me refer</p> <p>13 your attention to the top of page 11.</p> <p>14 On the second line starting in the middle</p> <p>15 of the line and going onto the next line it says,</p> <p>16 and I'm reading the middle of a sentence but feel</p> <p>17 free, Governor, to read the entire sentence or the</p> <p>18 entire document, but let me just quote what I want</p> <p>19 to draw your attention to.</p> <p>20 A. Which paragraph?</p> <p>21 Q. It's page 11.</p> <p>22 A. Yeah.</p> <p>23 Q. The very top paragraph.</p> <p>24 A. Okay.</p> <p>25 Q. It's the -- I'm going to start reading from the</p>

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<p>1 middle of the second line on the top of page 11. It 2 says "The City has negotiated in good faith with the 3 creditors willing to engage in a discussion..." 4 And then I'll stop the quote there but, 5 again, feel free to read the rest of the sentence. 6 My question is did you accept as true 7 Mr. Orr's representation to you that the City had 8 negotiated in good faith with the creditors willing 9 to engage in discussions? 10 A. Yes. Excuse the delay. I just wanted to make 11 sure -- I was going to point out that in the letter 12 he actually gave examples of where they tried to do 13 that on page eight. 14 Q. Okay. Okay. Apart from the letter -- well, first 15 of all, did you think when you received and read 16 this letter on July 16th that it was important to 17 your decisionmaking whether or not the City had, in 18 fact, engaged in good faith negotiations? 19 A. Yes. 20 Q. Okay. And did you undertake any independent 21 investigation or cause to be undertaken any 22 independent investigation to determine whether, in 23 fact, Mr. Orr's representation to you that there had 24 been good faith negotiations, whether that was a 25 true representation?</p>	<p>1 Q. Okay. Were you expecting to receive the July 16th, 2 2013 letter before you received it? 3 A. It was a work in process in terms of I didn't know 4 it was coming for sure, but I knew he was putting 5 together a letter. 6 Q. Who told you that -- I assume when you say he you 7 mean Mr. Orr? 8 A. Yes. 9 Q. Who told you Mr. Orr was putting together a letter? 10 A. That would have been Kevyn Orr himself. 11 Q. Okay. And how did he tell you that? Was it in 12 writing or spoken words? 13 A. It would have been in a meeting where we had 14 attorneys present. 15 Q. Okay. And at this meeting, he indicated to you that 16 he was going to be sending you a letter seeking 17 authorization to file for bankruptcy? 18 A. He said he was going to begin work on that. 19 Q. Okay. Apart from that communication at that 20 meeting, did you receive any other heads up, if I 21 can use that term, that the letter was on its way? 22 A. Well, again, there were people in that meeting that 23 were also aware of that, so there were discussions 24 if a letter was to come how would we respond. 25 Q. Okay. But apart from that meeting where you</p>
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<p>1 A. Yes. 2 Q. What was your -- what independent investigation did 3 you cause to be undertaken? 4 A. What I would say is I looked at this in addition to 5 the facts of what had been publicly filed, which 6 would include the lawsuits that -- I apologize, I 7 can't remember who's representing which lawsuits, 8 but it showed that rather than people continuing 9 negotiations that some of the parties that were in 10 negotiations with the City elected to go file 11 lawsuits, which showed there was a breakdown in 12 negotiations, that people were going to court rather 13 than continuing dialogue. 14 Q. Okay. So just so I understand your answer, your 15 acceptance of the truth of the assertion that there 16 had been good faith negotiations were based on what 17 you read in the July 16th letter? 18 A. Uh-huh. 19 Q. And also the fact that certain lawsuits had been 20 filed? 21 A. Yes. 22 Q. Okay. Was there anything else that you relied on to 23 conclude that there had been good faith 24 negotiations? 25 A. No.</p>	<p>1 testified Mr. Orr told you that he was going to send 2 the letter -- first of all, when was that meeting, 3 do you know? 4 A. It was in the prior week. 5 Q. So it was a week before July 16? 6 A. Yeah. 7 Q. Okay. Between that meeting -- do you remember the 8 day? 9 A. No. 10 Q. Do you remember the date? 11 A. No. 12 Q. Okay. Between that meeting and when you received 13 the letter, did anyone else communicate to you that 14 the letter was coming? 15 A. Again, the context I would put it in is there 16 were people looking -- people on my staff that were 17 looking to say if a letter was to come, how would we 18 communicate that in terms of if I was to respond and 19 what time would I respond to the public. 20 So it was more looking at the timeline of a 21 communications plan. 22 Q. I'm sorry, I'm not sure I understood. 23 A. So -- 24 Q. Let me just ask a more specific question. 25 After the meeting that you've testified</p>

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<p>1 about and before you got the letter, did anyone tell</p> <p>2 you that the letter was coming?</p> <p>3 A. They didn't give me any information different than I</p> <p>4 had received from Kevyn Orr.</p> <p>5 Q. And the information from Kevyn Orr is what you</p> <p>6 received at the meeting?</p> <p>7 A. Yeah, an updated -- well, again, we continued to</p> <p>8 talk after that so that wouldn't have been the only</p> <p>9 discussion.</p> <p>10 Q. Okay. You and Kevyn Orr continued to talk after the</p> <p>11 meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Was it a one-on-one conversation?</p> <p>14 A. No.</p> <p>15 Q. Was it in the context of subsequent meetings?</p> <p>16 A. Or calls.</p> <p>17 Q. Were there attorneys on those calls?</p> <p>18 A. Yes.</p> <p>19 Q. On each of the calls?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. When you received the July 16th letter, which</p> <p>22 asked for you to approve a bankruptcy filing, did</p> <p>23 you immediately upon reading the letter know how you</p> <p>24 were going to respond?</p> <p>25 A. No.</p>	<p>1 investigation of any facts or legal conclusions that</p> <p>2 were in the July 16th letter before you made your</p> <p>3 decision to sign the July 18th letter?</p> <p>4 A. Well, I mentioned the lawsuit issue, but besides</p> <p>5 that it was more looking at the consistency of what</p> <p>6 was in this letter with prior reports from Kevyn Orr</p> <p>7 and prior reports from the review team. Review</p> <p>8 teams I should say.</p> <p>9 Q. Let me refer you to page four of the July 18th</p> <p>10 letter. At the top there's a paragraph that bears</p> <p>11 the heading contingencies.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And I'm going to read the first sentence. It says</p> <p>14 "2002 PA 436 provides that my approval of the</p> <p>15 recommendation to commence a Chapter 9 proceeding</p> <p>16 may place contingencies on such a filing." That's</p> <p>17 the end of the sentence. Then there's a legal</p> <p>18 citation, and then the next sentence says "I am</p> <p>19 choosing not to impose any such contingencies</p> <p>20 today."</p> <p>21 Did you consider at any point after you</p> <p>22 received the July 16th letter placing any</p> <p>23 contingencies on the City's bankruptcy filing?</p> <p>24 A. My legal counsel made me aware that contingencies</p> <p>25 were permitted under the law, but I chose not to</p>
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<p>1 Q. And did you give consideration to anything before</p> <p>2 you made the decision that is set forth in your</p> <p>3 July 18th letter?</p> <p>4 A. I contemplated. Actually, I said this was a major</p> <p>5 decision, a very significant decision about Detroit</p> <p>6 and implications for our state and for a number of</p> <p>7 parties.</p> <p>8 Q. And what were your -- what did you -- what were your</p> <p>9 contemplations on?</p> <p>10 A. It was, again, reviewing the letter that had been</p> <p>11 provided. It included going back to the review team</p> <p>12 reports. It had been looking at the totality,</p> <p>13 because this is a situation again -- let me know if</p> <p>14 you want to stop, but this is a process that I've</p> <p>15 been addressing since becoming Governor that goes</p> <p>16 back to 2011 going through preliminary reviews,</p> <p>17 reviews, consent agreements. This has been a highly</p> <p>18 structured process for close to three years.</p> <p>19 Q. Between the time you received the July 16th letter</p> <p>20 and when you signed your July 18th letter, did you</p> <p>21 speak to anyone about your decisionmaking thinking</p> <p>22 outside of the context or outside of the presence of</p> <p>23 legal counsel?</p> <p>24 A. No.</p> <p>25 Q. Did you undertake or cause anyone to undertake any</p>	<p>1 place any.</p> <p>2 Q. Okay.</p> <p>3 A. Yeah.</p> <p>4 Q. It's clear from your letter that you chose not to</p> <p>5 place any.</p> <p>6 My question is before you made that</p> <p>7 decision not to place any, was there any period when</p> <p>8 you considered placing any -- any contingencies on</p> <p>9 the filing?</p> <p>10 A. I'm not trying to be difficult, but the matter was</p> <p>11 brought to my attention and I dismissed it without</p> <p>12 major discussion with my legal counsel because the</p> <p>13 way I viewed it was placing contingencies could only</p> <p>14 cause -- most likely cause more delay or confusion</p> <p>15 in the bankruptcy process; that I have confidence in</p> <p>16 the bankruptcy process itself in terms of being a</p> <p>17 legal process, an appropriately legal process; and</p> <p>18 that's why, in fact, I wanted that sentence added.</p> <p>19 Q. What sentence are you referring to?</p> <p>20 A. The sentence about federal law already contains the</p> <p>21 most important contingency, a requirement that the</p> <p>22 plan be legally executable.</p> <p>23 Q. Okay. And I'm going to ask you about that in a</p> <p>24 minute, but I just want to focus first on your</p> <p>25 decision not to place any contingencies.</p>

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<p>1 A. Well, that's why I didn't. I simply said I thought 2 that was the one contingency that was appropriate, 3 that it be in line with being legal. 4 Q. Okay. You were aware as of July 18th that some 5 people, some entities, argued that the Michigan 6 Constitution prohibited the reduction of accrued 7 pension benefits? 8 Were you aware of that as of July 18th? 9 A. Yes. 10 Q. Did you consider making the Detroit City bankruptcy 11 filing contingent on the City not seeking to cut 12 accrued pension liabilities? Did you consider that? 13 A. I considered it by adding this sentence, which 14 basically says it's a matter -- it's a legal 15 question to say Michigan Constitution versus federal 16 law versus other Michigan statutes, and I was going 17 to leave that, that's a legal question that I 18 thought best left to the courts. 19 Q. So is it your testimony that you did consider 20 putting that contingency on but you decided not to 21 because of the reason you just said? 22 A. Well, again, I viewed this as an overriding 23 statement that I thought whatever came out of this 24 process through the bankruptcy needed to be a legal 25 answer, because I do follow the law.</p>	<p>1 Q. Was it your understanding that you could have placed 2 just one contingency on the filing which is that the 3 City could not seek to cut accrued pension benefits? 4 A. Again, my concern is -- 5 Q. I'm not asking your concern. 6 A. Yes. 7 Q. Was it your understanding that you, if you had 8 chosen to, could have placed just one contingency? 9 A. Yes. 10 Q. Okay. Let me now refer you to the last sentence of 11 the paragraph that says "Federal law already 12 contains the most important contingency, a 13 requirement that the plan be legally executable, and 14 then it cites 11 USC 943(b)(4)." 15 What was your understanding, if you had one 16 as of July 18th when you signed this letter, of what 17 11 USC 943(b)(4) was? 18 A. The statement was my primary concern. I had very 19 good legal counsel. My legal advisors work on the 20 citation. They thought it would be helpful. 21 Q. Okay. So whose -- I should have asked you earlier. 22 Who prepared this letter that's the 23 July 18th letter? 24 A. I did in conjunction with my legal counsel. 25 Q. Okay. Was it just you and legal counsel that</p>
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<p>1 Q. Okay. I just want to be clear -- 2 A. Yeah. 3 Q. -- I'm understanding your testimony. 4 You did consider at some point before you 5 signed -- is it true that at some point before you 6 signed the July 18th letter that you considered 7 making the bankruptcy filing contingent on the City 8 not seeking to cut accrued pension benefits? 9 A. I would say -- I wouldn't describe it that way. I 10 would describe it not just on pensions or anything 11 else, just the totality of the situation to say that 12 there are many legal questions that are being 13 litigated through this bankruptcy process, as you 14 can see. 15 In terms of objections and my overriding 16 concern is that anything that should come out of 17 this needed to be legal. So that's where I did 18 basically -- rather than specifically even 19 considering contingencies on one area or another, 20 because I viewed that as a troublesome area to say 21 should there -- if you put one contingency could you 22 end up with 15 contingencies versus saying the 23 overriding concern is that this plan be legal, and 24 that's already provided for under federal bankruptcy 25 law.</p>	<p>1 prepared the letter? 2 A. Yes. 3 Q. Okay. And so it was legal counsel that suggested 4 putting in this citation to Section 943(b)(4)? 5 A. Yeah. 6 Q. And whose idea was it that -- to say that federal 7 law already contains the most important contingency, 8 a requirement that the plan be legally executable? 9 Was that your idea to put that in or was 10 that legal counsel's? 11 A. I'm not sure if we're getting into an area where 12 this would be more attorney-client privilege. 13 MS. NELSON: Absolutely. In terms of 14 actual analysis of what was going on, it's 15 attorney-client privilege. The letter stands for 16 itself. 17 BY MR. DeCHIARA: 18 Q. Did you think that making the -- the requirement 19 that the plan be legally executable was more 20 important than protecting the pensions of the 21 employees and retirees of the City of Detroit? 22 A. I don't view those as conflicting statements. I 23 view that as the legal process, there are legal 24 questions that needed to be addressed and that the 25 plan needed to be legal. Just what it says.</p>

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<p>1 Q. Did you -- why did you within two days of receiving 2 the July 16th letter issue your response? Why 3 didn't you -- if it was a major decision, as you 4 said, why didn't you wait longer?</p> <p>5 A. That was an appropriate time period. When I got the 6 letter, I actually said I was going to wait some 7 time in terms of a day or two to look at it, and in 8 fact I did.</p> <p>9 Q. Did you speak to Mr. Orr about the timing of when 10 the bankruptcy petition should be filed?</p> <p>11 A. Again, we had -- there were general discussions, 12 yes.</p> <p>13 Q. And was it more than one discussion with Mr. Orr on 14 that subject?</p> <p>15 A. Yes.</p> <p>16 Q. And were these -- were any of these in the 17 presence -- outside the presence of legal counsel?</p> <p>18 A. No.</p> <p>19 Q. I'd like to read to you from the transcript of the 20 deposition that Mr. Orr gave in this case on 21 September 16th, 2013, and I'm going to read from 22 page 210 of the transcript beginning line nine. 23 And this is Mr. Orr's testimony. It says 24 "I think we generally -- and he's referring to 25 discussions with you, Governor Snyder.</p>	<p>1 discussed certain lawsuits in connection to when the 2 bankruptcy filing should take place?</p> <p>3 A. I don't recall that.</p> <p>4 Q. Okay. Do you dispute Mr. Orr's testimony that he 5 had that discussion with you?</p> <p>6 A. I -- I have a -- I don't recall any discussion of 7 lawsuits.</p> <p>8 We would talk about how is he doing in 9 terms of the position, you know, the challenges, the 10 stress and operational issues when we did our 11 one-on-ones.</p> <p>12 Q. But is your testimony that Mr. Orr is wrong when he 13 testified that this conversation with you occurred 14 or is your testimony that it might have occurred, 15 you just don't remember?</p> <p>16 A. I wouldn't dispute him, but I clearly don't recall 17 that.</p> <p>18 Q. Okay. You were aware of certain lawsuits that were 19 being filed against Mr. Orr in the time period of 20 July -- the first half of July of 2013, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you were aware that in those lawsuits 23 injunctive -- interim injunctive relief was being 24 sought?</p> <p>25 MS. NELSON: I'm going to object because it</p>
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<p>1 He says "I think we generally discussed 2 the ongoing operational restructuring, the status 3 at a very high level. The Governor, you know, we 4 don't -- we typically do not discuss how many 5 meetings, who attended, what was said went back and 6 forth, it was just a very high level of how things 7 were going with the restructuring efforts and that 8 the lawsuits, this is just with the Governor, were 9 beginning to create the risk that we would lose the 10 initiative and I might be unable to discharge my 11 obligations under 436."</p> <p>12 Did you have a one-on-one conversation just 13 with Mr. Orr, as he testified, in which you 14 discussed certain lawsuits beginning to create a 15 risk that Mr. Orr would lose the initiative and 16 might be unable to discharge his obligations under 17 436?</p> <p>18 A. Yeah, I'm not sure what time frame you're talking to 19 with respect to -- you did mention that you were 20 giving me some quote.</p> <p>21 Q. And let me represent that the questioning put the 22 time frame as best as I can tell as between July 3rd 23 and July 17th, 2013.</p> <p>24 Did you have a one-on-one conversation with 25 Mr. Orr during that time frame in which you</p>	<p>1 mischaracterizes -- and I'm not exactly sure what 2 lawsuits you are referencing. In that time period 3 there was only one lawsuit filed against Mr. Orr, 4 and that was General Retirement System. I believe, 5 and perhaps we can correct for the record, on the 6 Flowers and Webster lawsuits were against -- only 7 against the Governor and the Treasurer.</p> <p>8 MR. DeCHIARA: Okay. Let me just question 9 the Governor on the best of his memory.</p> <p>10 BY MR. DeCHIARA:</p> <p>11 Q. Governor, were you aware of there being one or more 12 lawsuits against Mr. Orr?</p> <p>13 A. Again, I'm not sure which party was being sued, but 14 there were lawsuits, yes.</p> <p>15 Q. Okay. You were aware -- and let me speak more 16 generally. You were aware that in the first part of 17 July there were certain lawsuits filed concerning 18 issues related to Detroit's ability to file for 19 bankruptcy?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And in those lawsuits, were you aware -- 22 strike that.</p> <p>23 Were you aware that in those lawsuits there 24 was interim injunctive relief sought by the 25 plaintiff or plaintiffs?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. And did that knowledge have any impact on</p> <p>3 your view about when the bankruptcy petition should</p> <p>4 be filed?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you ever discuss with anyone those --</p> <p>7 apart from your legal counsel the fact that in one</p> <p>8 or more of those lawsuits there were requests for</p> <p>9 interim injunctive relief?</p> <p>10 A. Again, those discussions would have been subject to</p> <p>11 attorney-client privilege.</p> <p>12 Q. Well, again, without the legal conclusion --</p> <p>13 A. Yeah.</p> <p>14 Q. -- were those -- did you have any discussions about</p> <p>15 that subject outside of discussions with legal</p> <p>16 counsel?</p> <p>17 A. They're discussions about the lawsuits.</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. We're speaking past each other.</p> <p>21 A. Yeah. Yeah.</p> <p>22 Q. Did you have any conversations outside of the</p> <p>23 presence of your legal counsel about the fact --</p> <p>24 A. No. Legal counsel was --</p> <p>25 Q. Let me finish just to clarify.</p>	<p>1 a pitch to be hired by the City of Detroit as the</p> <p>2 City's restructuring counsel?</p> <p>3 A. I couldn't speak to the specific date but,</p> <p>4 generally, yes.</p> <p>5 Q. Okay. You were aware that there was this meeting at</p> <p>6 which certain law firms made pitches?</p> <p>7 A. Yeah, and I wasn't sure it was one meeting or more</p> <p>8 meetings because I was not part of that process, but</p> <p>9 I was aware the City of Detroit was talking to law</p> <p>10 firms.</p> <p>11 Q. Okay. Richard Baird was part of that process,</p> <p>12 correct?</p> <p>13 A. I'm -- I'm not sure. I don't know.</p> <p>14 Q. You don't know whether Richard Baird attended any</p> <p>15 meetings at which --</p> <p>16 A. I know he attended some meetings involving that</p> <p>17 process, but I don't know if he had attended that</p> <p>18 meeting.</p> <p>19 Q. Okay. Well, do you know whether Richard Baird</p> <p>20 attended a meeting at which the Jones Day law firm</p> <p>21 made a pitch to be hired by the City of Detroit?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And did Mr. Baird speak to you about the</p> <p>24 meeting at which Jones Day made a pitch to be hired</p> <p>25 by the City of Detroit?</p>
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<p>1 MS. NELSON: Let him -- Governor, let him</p> <p>2 finish the question again so that it's clear on the</p> <p>3 record what he's asking.</p> <p>4 THE WITNESS: Okay. Okay.</p> <p>5 BY MR. DeCHIARA:</p> <p>6 Q. Okay. Apart from any conversations you may have had</p> <p>7 with your legal counsel, did you have any</p> <p>8 discussions with anyone else about the fact that in</p> <p>9 these lawsuits there were requests for injunctive</p> <p>10 interim relief?</p> <p>11 A. In any meeting, legal counsel would have been</p> <p>12 present.</p> <p>13 Sorry, there's a lot of attorneys involved</p> <p>14 here.</p> <p>15 Q. Goes with the territory.</p> <p>16 MR. WERTHEIMER: We can all agree on that.</p> <p>17 BY MR. DeCHIARA:</p> <p>18 Q. Are you aware that -- this is going back a few</p> <p>19 months -- on January 29th, 2013, there was a meeting</p> <p>20 at which various law firms made a pitch to be hired</p> <p>21 by the City of Detroit as their restructuring</p> <p>22 counsel?</p> <p>23 A. Could you repeat that?</p> <p>24 Q. Were you aware that on or about January 29th, 2013,</p> <p>25 there was a meeting at which various law firms made</p>	<p>1 A. I don't recall him coming to me about the meeting</p> <p>2 per se with Jones Day and what they pitched.</p> <p>3 Q. Did he ever show you what's been referred to in this</p> <p>4 case and other depositions as a pitch book, a series</p> <p>5 of slides that Jones Day presented at that meeting?</p> <p>6 Did he ever show you that? Any document</p> <p>7 like that?</p> <p>8 A. I don't recall that.</p> <p>9 Q. Okay. Let me show you a document I'll ask to have</p> <p>10 marked as Exhibit 5.</p> <p>11</p> <p>12 (Deposition Exhibit 5 was marked.)</p> <p>13</p> <p>14 BY MR. DeCHIARA:</p> <p>15 Q. Governor, have you ever -- let me just identify for</p> <p>16 the record that Exhibit 5 is a document that says</p> <p>17 Presentation to the City of Detroit; Detroit,</p> <p>18 Michigan; January 29, 2013. There's date stamp on</p> <p>19 it DTMI 00128731.</p> <p>20 Governor, have you ever seen Exhibit 5?</p> <p>21 A. I don't recall it.</p> <p>22 Q. Okay. Did Mr. Baird speak to you about -- strike</p> <p>23 that.</p> <p>24 Did Mr. Baird express to you any views he</p> <p>25 had about whether or not the City should hire Jones</p>

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<p>1 Day?</p> <p>2 A. I don't recall that.</p> <p>3 Q. Okay. Do you remember speaking to him about that</p> <p>4 subject, about whether or not the City should hire</p> <p>5 Jones Day?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did Mr. Baird ever speak to you about whether</p> <p>8 Kevyn Orr should be the emergency manager of</p> <p>9 Detroit?</p> <p>10 A. That was the context that I spoke to Mr. Baird</p> <p>11 about. It was not being the emergency manager but</p> <p>12 being a candidate for emergency manager.</p> <p>13 Q. Okay. And were these discussions you had with</p> <p>14 Mr. Baird about the subject of Mr. Orr's candidacy,</p> <p>15 where did those discussions take place?</p> <p>16 A. I don't recall.</p> <p>17 Q. Were they phone calls or face-to-face meetings?</p> <p>18 A. That's where I don't recall. I do many meetings and</p> <p>19 phone calls.</p> <p>20 Q. Do you recall with any certainty whether legal</p> <p>21 counsel was present in any discussions you had with</p> <p>22 Mr. Baird concerning the candidacy of Mr. Orr?</p> <p>23 A. They very likely could have been for some of those</p> <p>24 but I don't recall.</p> <p>25 Q. Okay. Is it likely that there were at least some</p>	<p>1 may have had about the Michigan Constitution?</p> <p>2 A. I don't believe so.</p> <p>3 Q. After Mr. Orr was appointed as emergency manager,</p> <p>4 you had regular meetings with him, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And those were formal meetings with legal counsel</p> <p>7 and staff present, correct?</p> <p>8 A. Yes, and informal meetings.</p> <p>9 Q. Okay. At the informal meetings, were legal counsel</p> <p>10 present?</p> <p>11 A. No.</p> <p>12 Q. Okay. Who was present at the informal meetings?</p> <p>13 A. Generally, it was just Kevyn and myself.</p> <p>14 Occasionally, it could have been Dennis Muchmore</p> <p>15 with Kevyn and I. That would be much less frequent,</p> <p>16 and more recently, potentially Greg Tedder.</p> <p>17 Q. Who were the two people you just named?</p> <p>18 A. Dennis Muchmore is chief of staff.</p> <p>19 Q. Who was the other person?</p> <p>20 A. Greg Tedder is essentially the person from our</p> <p>21 office that's working with Kevyn Orr on his staff --</p> <p>22 Q. Okay.</p> <p>23 A. -- as a liaison between the Governor's office and</p> <p>24 the City of Detroit.</p> <p>25 Q. Okay. In any of the informal meetings, as you</p>
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<p>1 where it was just you and Mr. Baird speaking?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall in any of the meetings you had</p> <p>4 with Mr. Baird what you two discussed when it was</p> <p>5 just the two of you about Mr. Orr's candidacy?</p> <p>6 A. Generally, what I would say is I was not involved in</p> <p>7 this process at all other than understanding that</p> <p>8 generally the City of Detroit was looking for</p> <p>9 attorneys and that in that context Mr. Baird</p> <p>10 identified Kevyn Orr as a potential candidate to be</p> <p>11 emergency manager, and he brought up the concept of</p> <p>12 going to the firm at some point and asking their</p> <p>13 permission to -- on whether he could speak to him</p> <p>14 separately in that capacity.</p> <p>15 Q. Did Mr. Baird when he said that to you indicate why</p> <p>16 he thought Mr. Orr should be contacted and spoken to</p> <p>17 as a potential candidate?</p> <p>18 A. Very impressed with his credentials and</p> <p>19 presentation.</p> <p>20 Q. Did Mr. Baird say anything, discuss with you at all</p> <p>21 the views that Jones Day had or that Mr. Orr had</p> <p>22 about Detroit's pension liabilities?</p> <p>23 A. I don't recall any.</p> <p>24 Q. Okay. Did Mr. Baird speak to you at all about any</p> <p>25 views that Jones Day may have had or that Mr. Orr</p>	<p>1 refer to them, were Mr. Muchmore and Mr. Tenor</p> <p>2 acting as --</p> <p>3 A. Tedder. Tedder. T-E-D-D-E-R. Sorry, I'm --</p> <p>4 Q. Okay. Thank you. I appreciate it.</p> <p>5 A. A lot like being out of state with the names.</p> <p>6 Q. At any of the informal meetings, were Mr. Muchmore</p> <p>7 and Mr. Tedder acting in the capacity as attorneys</p> <p>8 for the City or the State?</p> <p>9 A. No.</p> <p>10 Q. Okay. Would there -- how often were these informal</p> <p>11 meetings?</p> <p>12 A. As I said, most of the meetings were just Kevyn Orr</p> <p>13 and myself. The frequency was probably about every</p> <p>14 two weeks or so.</p> <p>15 Q. Over what period of time?</p> <p>16 A. Since his appointment as emergency manager, and when</p> <p>17 I say two weeks it wasn't necessarily every two</p> <p>18 weeks but that was sort of the normal schedule</p> <p>19 process.</p> <p>20 Q. And when was he appointed emergency manager? Do you</p> <p>21 remember the date?</p> <p>22 A. March.</p> <p>23 Q. Do you remember the date, specifically?</p> <p>24 A. Again, there's appointment dates, effective dates.</p> <p>25 Q. Right. Gets confusing.</p>

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<p>1 And up -- so it began -- these informal 2 meetings that occurred every two weeks or so began 3 in March, and have they continued through the 4 present?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. In the informal meetings you had with Mr. Orr 7 prior to July 18th, 2013, did you ever speak with 8 him about the issue of Detroit's pension 9 liabilities?</p> <p>10 A. In those meetings, no.</p> <p>11 Q. What did you speak to him about in those meetings?</p> <p>12 A. Two general topics that were reserved for those 13 meetings. One is just personally how he's 14 dealing with the position that he's in and in terms 15 of how he's interacting with staff, his family 16 challenges given that his family is in Washington 17 D.C.</p> <p>18 So it was more as an advisor helper kind of 19 person to help him support through that process and 20 then on operational matters, because the way it's 21 traditionally defined in our meetings, there are 22 three tracks that get discussed. One is the 23 bankruptcy process, one is the operational process, 24 and the third is about what would happen 25 posttransition when he is no longer emergency</p>	<p>1 obligations that the City owed?</p> <p>2 Mr. Shumaker: Objection to form.</p> <p>3 Answer: Yes, I believe so.</p> <p>4 Question: And when did those take place?</p> <p>5 Answer: Since becoming emergency manager 6 on the 25th, I've had regular conversations with the 7 Governor, typically weekly. I don't recall the 8 specific conversations when they came up. I will 9 say that it wasn't within our initial conversations.</p> <p>10 Did -- having heard me read Mr. Orr's 11 testimony, let me ask you, Governor, did you have 12 discussions with Mr. Orr about a Chapter 9 filing to 13 among other things get out of the pension 14 obligations that the City owed?</p> <p>15 A. Again, in terms of getting out of pension 16 obligations, we had discussions that were these 17 larger meetings or meetings where counsel was 18 present that would discuss the prospect of 19 bankruptcy, and in many cases during the earlier 20 days it was how to avoid bankruptcy by going through 21 a negotiation process.</p> <p>22 Q. In any of the informal meetings where counsel 23 wasn't present, was there any discussion about a 24 bankruptcy -- a possible bankruptcy filing?</p> <p>25 A. Again, the topic would come up, but then we would</p>
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<p>1 manager.</p> <p>2 And so the tracks discussed in those other 3 meetings, the meetings we've just been discussing, 4 would tend to be on the operational track. And we 5 wouldn't discuss matters on the bankruptcy track 6 because, again, those should be reserved for where 7 there was legal counsel present.</p> <p>8 Q. In the informal meetings, did you speak to Mr. Orr 9 about the prospect of the City filing for 10 bankruptcy?</p> <p>11 A. Again, those would have been in the bankruptcy track 12 meetings with legal counsel present.</p> <p>13 The operational track meetings, the topics 14 that would be -- things that would be discussed 15 potentially would be there's a request for proposal 16 for solid waste garbage pickup. Topics like that 17 that are important to the citizens in terms of 18 improved services.</p> <p>19 Q. I'd like to read testimony by Mr. Orr from his 20 September 16th deposition. It's on page 84 of the 21 September 16th deposition. I'll begin on line 13.</p> <p>22 Question: Now, at some point after you 23 became the emergency manager, did you have 24 discussions with the Governor about a Chapter 9 25 filing to among other things get out of the pension</p>	<p>1 try to move back to operational issues and not get 2 into bankruptcy track issues because they were 3 reserved for the other meetings.</p> <p>4 Q. But sometimes the topic came up at the informal 5 meetings?</p> <p>6 A. Well, again, that it's something that's been out 7 there because it would most likely be in the context 8 of press accounts.</p> <p>9 Q. My question is in your informal meetings with 10 Mr. Orr, did the topic come up, the topic of 11 Detroit's bankruptcy filing?</p> <p>12 A. Did the word bankruptcy come up, yes. In terms of 13 discussing bankruptcy, no.</p> <p>14 Q. Well -- okay. You interviewed Mr. Orr, did you not, 15 in the middle of February 2013?</p> <p>16 A. Yes.</p> <p>17 Q. I believe you went out to lunch with him with 18 Mr. Baird?</p> <p>19 A. I don't believe I went out to lunch with him but I 20 did interview him.</p> <p>21 Q. Okay. Thank you. I may have misspoken.</p> <p>22 In that meeting, did you speak about 23 Detroit's pension liabilities?</p> <p>24 A. I don't recall.</p> <p>25 Q. Did you speak about Detroit's -- possibility of</p>

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1 Detroit filing for bankruptcy?

2 A. Generally, yes.

3 Q. And what was your recollection of what you and

4 Mr. Orr said about that subject during the

5 interview?

6 A. A big part of it was making sure he understood the

7 history here, that this had been a process going on

8 for over two years and in a very methodical way;

9 again, review teams, consent agreement, going

10 through that whole process so he'd get the context

11 and make sure it was clear that bankruptcy was to be

12 a last resort; that the real question here is is

13 there a way to work this out in a mutual fashion;

14 that would be extremely challenging because there

15 are a large number of parties, but we should make a

16 very good faith effort to work this out.

17 Q. Governor, I'd ask you to focus on what words you

18 said in the interview on that subject --

19 A. Yeah.

20 Q. -- and what words Mr. Orr said.

21 Do you have a recollection of what words

22 you said?

23 A. I just recounted generally this has been my position

24 that I wanted to really make it clear to him. I

25 also made it clear to him that I viewed it as he was

1 BY MR. WERTHEIMER:

2 Q. Governor, we met before. My name is

3 Bill Wertheimer, and I represent the Flowers group

4 of plaintiffs who were plaintiffs in one of those

5 early state court lawsuits and are now creditors in

6 the bankruptcy proceeding.

7 A. Uh-huh.

8 Q. I'd like to ask you a couple of follow-up questions.

9 You were asked early on about conversations

10 you had with Mr. Bolger and Mr. Richardville.

11 A. Uh-huh.

12 Q. They are Republican political figures in Michigan;

13 are they not?

14 A. Yes.

15 Q. I just don't know who is who --

16 A. Okay.

17 Q. -- so I'm not trying to be pejorative.

18 A. No. Jase Bolger is Speaker of the House and Randy

19 Richardville is the Senate Majority Leader.

20 Q. And you did indicate that you had some conversations

21 with them early on about the possibility of Detroit

22 going into bankruptcy?

23 A. It wasn't in the context of Detroit being bankrupt.

24 I would try to give them regular updates on what was

25 going on over the last two or three years; for

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1 the -- in this context, not in terms of just

2 bankruptcy, but he was responsible for really

3 helping make those decisions for the City of Detroit

4 in terms of going through the negotiation process,

5 working with people, working through the process;

6 that I was to be a supportive resource.

7 Q. Did you speak to him about or did he speak to you in

8 that interview when a bankruptcy filing might take

9 place?

10 A. Again, it would be after a good faith effort to try

11 to resolve these issues short of bankruptcy.

12 Q. And who said those words that you just said?

13 I'm focusing on what was said in the

14 interview. So did someone say that?

15 A. Yeah. I couldn't tell you who said them first, but

16 we both -- I believe -- my recollection is we would

17 both agree that was a very important criteria.

18 MR. DeCHIARA: Could we go off the record

19 for a second?

20 VIDEO TECHNICIAN: Off the record

21 10:47 a.m.

22 (A brief recess was taken.)

23 VIDEO TECHNICIAN: We're back on the record

24 at 10:58 a.m.

25 EXAMINATION

1 example, going back to the review team, going on the

2 consent agreement, the whole process.

3 Q. In any of these conversations did either or both of

4 them ever communicate to you that they would not be

5 in favor of the State taking any responsibility for

6 the pension benefits of the City?

7 A. I don't recall.

8 Q. They might have -- one or both of them might have,

9 you just don't recall one way or the other?

10 A. I don't recall one way or the other.

11 Q. Okay. Fair enough.

12 You were asked a couple of questions about

13 your preparation for this deposition.

14 On how many occasions did you prepare?

15 A. I believe it was two. Or three. I'm sorry, three.

16 Q. Three? And when did they occur? When were they?

17 A. One was a couple weeks ago and then yesterday and

18 then this morning.

19 Q. And how long in total did you take to prepare, if

20 you can add up the time, or we can go through the

21 three.

22 A. In terms of meeting with counsel?

23 Q. Yes. Yes.

24 A. Yeah.

25 Q. I'm not going to get into the content, but I'd like

<p style="text-align: right;">Page 109</p> <p>1 to know how long you met with your attorneys talking</p> <p>2 about your deposition.</p> <p>3 A. Yeah. No, that's fine. I just wanted to make sure</p> <p>4 I ask.</p> <p>5 Q. Yes. Yes.</p> <p>6 A. I would say probably three hours, three and a half</p> <p>7 hours.</p> <p>8 Q. Total?</p> <p>9 A. Total.</p> <p>10 Q. Okay. Now, you were asked some questions about</p> <p>11 conversations you had with Mr. Orr, and counsel read</p> <p>12 you a question and answer which indicated that</p> <p>13 Mr. Orr recalls a conversation after he became</p> <p>14 emergency manager but before the Chapter 9 filing</p> <p>15 where, quoting, "Among other things, the talk was to</p> <p>16 get out of the pension obligations that the City</p> <p>17 owed."</p> <p>18 Do you recall that subject coming up with</p> <p>19 Mr. Orr after he became emergency manager and before</p> <p>20 the Chapter 9 filing?</p> <p>21 A. Yeah, I don't recall that outside the context of a</p> <p>22 meeting where we would have had counsel present.</p> <p>23 Q. Well --</p> <p>24 A. And, again, I don't believe I would characterize it</p> <p>25 as getting out of pension obligations.</p>	<p style="text-align: right;">Page 111</p> <p>1 foundation for it, or when that meeting happened or</p> <p>2 who else was present.</p> <p>3 I disagree that it waives attorney-client</p> <p>4 privilege, and having read the deposition it was</p> <p>5 very clear that Mr. Orr on the 16th of September and</p> <p>6 in his next subsequent deposition on October 4th was</p> <p>7 very careful to preserve attorney-client privilege.</p> <p>8 The question of whether there was a</p> <p>9 specific discussion about getting out of pensions</p> <p>10 was answered by the Governor just now. He did not</p> <p>11 recall it in that context, so ask your next</p> <p>12 question.</p> <p>13 MR. WERTHEIMER: No, but he -- the Governor</p> <p>14 excluded conversations with attorneys present.</p> <p>15 And you're correct, Mr. Orr was very</p> <p>16 careful to assert the attorney-client privilege at</p> <p>17 his deposition. He did not assert it as to this</p> <p>18 question. And your characterization that the</p> <p>19 context isn't clear is wrong.</p> <p>20 BY MR. WERTHEIMER:</p> <p>21 Q. As counsel read the Governor, the question was: At</p> <p>22 some point after you became emergency manager, did</p> <p>23 you have discussions with the Governor about a</p> <p>24 Chapter 9 filing to among other things get out of</p> <p>25 the pension obligations that the City owed?</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. But a discussion of the fact that you would -- it</p> <p>2 would be easier to deal with the pension issue in</p> <p>3 bankruptcy than not in bankruptcy? Did you have any</p> <p>4 such discussions like that with Mr. Orr?</p> <p>5 A. Again, those would have been in attorney-client</p> <p>6 meetings.</p> <p>7 Q. Well, for the record, Mr. Orr has testified as to</p> <p>8 those -- that conversation, at least one, and has</p> <p>9 not asserted the attorney-client privilege. So it's</p> <p>10 my position that any attorney-client privilege would</p> <p>11 have been waived.</p> <p>12 A. I don't recall anything outside those meetings.</p> <p>13 Q. No, I understand.</p> <p>14 A. Okay.</p> <p>15 Q. But what I'm suggesting to your counsel is that you</p> <p>16 should answer the question even as to those meetings</p> <p>17 because Mr. Orr, who is asserting a common interest</p> <p>18 privilege with the State of Michigan, has answered</p> <p>19 that question and has not asserted the</p> <p>20 attorney-client privilege.</p> <p>21 So I'd ask you to answer the question as to</p> <p>22 the meeting the attorneys were present at.</p> <p>23 MS. NELSON: I disagree with that analysis,</p> <p>24 number one. Number two, the context in which that</p> <p>25 conversation occurred has not been explained, the</p>	<p style="text-align: right;">Page 112</p> <p>1 Object to form.</p> <p>2 Answer: Yes, I believe so.</p> <p>3 Question: And when did these take place?</p> <p>4 Answer: Since becoming emergency manager.</p> <p>5 Which is exactly how I phrased my question;</p> <p>6 that is, between the time that Mr. Orr became</p> <p>7 emergency manager and the time of a Chapter 9</p> <p>8 filing, do you recall any conversations including</p> <p>9 conversations at which attorneys were present in</p> <p>10 which you and Mr. Orr discussed among other things</p> <p>11 getting out of the pension obligations that the City</p> <p>12 owed?</p> <p>13 MS. NELSON: You can answer yes or no to</p> <p>14 that. That's the question. Yes, do you recall it;</p> <p>15 no, you don't recall it.</p> <p>16 THE WITNESS: Well, I wish it was that</p> <p>17 simple. I sort of object. I don't believe I had</p> <p>18 discussions about getting out of pension</p> <p>19 obligations. We had discussions regarding pension</p> <p>20 obligations.</p> <p>21 That would be yes to discussing pension</p> <p>22 obligations, and the context of getting out of --</p> <p>23 BY MR. WERTHEIMER:</p> <p>24 Q. Okay. Fair enough.</p> <p>25 A. -- I'm not -- I would not accept that as a</p>

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<p>1 characterization.</p> <p>2 Q. Let me rephrase the question then or ask another</p> <p>3 question.</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall any conversations you had with Mr. Orr</p> <p>6 with or without attorneys present between the time</p> <p>7 that he became emergency manager and the Chapter 9</p> <p>8 filing relating to the pension issue that he might</p> <p>9 have construed in such a way that he would answer</p> <p>10 affirmatively a question about getting out of the</p> <p>11 pension obligations that the City owed?</p> <p>12 MS. NELSON: Objection; form, foundation,</p> <p>13 calls for speculation. He can't testify about how</p> <p>14 Mr. Orr might have thought or formed or understood a</p> <p>15 question.</p> <p>16 MR. WERTHEIMER: Go ahead, you can answer,</p> <p>17 Governor.</p> <p>18 MS. NELSON: Go ahead.</p> <p>19 THE WITNESS: I just want to make sure I</p> <p>20 understand it. You're saying whether it was</p> <p>21 potentially covered by privilege or not.</p> <p>22 BY MR. WERTHEIMER:</p> <p>23 Q. Yes, whether it's covered by privilege or not.</p> <p>24 A. Yes. Was there a discussion on pension liabilities?</p> <p>25 Q. Well, yes, or any other kind of discussion where</p>	<p>1 won't look at her this time.</p> <p>2 Q. Feel free to look at her.</p> <p>3 I'd like to know what you can tell me you</p> <p>4 said and Mr. Orr said in the conversation you did</p> <p>5 have, the one or more conversations you had, between</p> <p>6 the time he became emergency manager and the</p> <p>7 Chapter 9 filing relative to the pension obligations</p> <p>8 that the City owed?</p> <p>9 A. Yeah, I would say there would be two or three pieces</p> <p>10 to that. One is a concern about who is representing</p> <p>11 the retirees.</p> <p>12 Q. Who's saying what -- to the extent you can,</p> <p>13 Governor, and I understand you're not going to</p> <p>14 remember exact words, but to the extent you can I'd</p> <p>15 like you to break down what you're saying and what</p> <p>16 Mr. Orr is saying so that we can identify who is</p> <p>17 saying what to the extent you remember.</p> <p>18 A. Okay.</p> <p>19 Q. Go ahead.</p> <p>20 A. Sure. Well, let me start at the terms of the</p> <p>21 discussion. One is there is clearly a concern</p> <p>22 for the retirees. These are people that worked for</p> <p>23 the City for many years. And I shared this thought</p> <p>24 that I am concerned about the retirees.</p> <p>25 The second piece ties into what was the</p>
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<p>1 somebody of Mr. Orr's sophistication might have as a</p> <p>2 result of that conversation answered a question</p> <p>3 affirmatively about getting out of pension</p> <p>4 obligations.</p> <p>5 MS. NELSON: Same objection. Go ahead.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. WERTHEIMER:</p> <p>8 Q. Okay. And what do you remember you said and what</p> <p>9 did he say relative to that, as best you remember?</p> <p>10 MS. NELSON: If you --</p> <p>11 THE WITNESS: Okay.</p> <p>12 MS. NELSON: You can answer that.</p> <p>13 THE WITNESS: I'm just checking. I'm</p> <p>14 sorry.</p> <p>15 BY MR. WERTHEIMER:</p> <p>16 Q. No, no. That's okay.</p> <p>17 A. You guys have been objecting enough, I'm trying to</p> <p>18 figure out --</p> <p>19 Q. For what it's worth, after she makes an objection</p> <p>20 unless she instructs you not to answer --</p> <p>21 A. Yeah.</p> <p>22 Q. -- she's making an objection for the record.</p> <p>23 A. No, I was just double-checking.</p> <p>24 Q. I understand, yeah. No, that's fine.</p> <p>25 A. Could you run it by me one more time then, and I</p>	<p>1 situation about representing the retirees. Mr. Orr</p> <p>2 brought that to my attention because he was having</p> <p>3 difficulty finding people to represent the retirees.</p> <p>4 The way it was described to me is there are a number</p> <p>5 of unions that were not willing to potentially</p> <p>6 represent the retirees versus their active members;</p> <p>7 that all the retirees were not going to have</p> <p>8 representation in some capacity during the</p> <p>9 negotiation process with creditors. And that was a</p> <p>10 concern because there are many parties to this.</p> <p>11 This is very complex. We're talking potentially</p> <p>12 20,000 retirees.</p> <p>13 In terms of that, again, I'm kind of --</p> <p>14 time frame, we had a general discussion about that</p> <p>15 being a problem. When it ultimately came down to</p> <p>16 looking at the bankruptcy -- possibility of a</p> <p>17 bankruptcy filing, one of the things that he brought</p> <p>18 forward and I really pushed was the issue about</p> <p>19 asking very quickly that there be representation for</p> <p>20 the retirees as part of the bankruptcy process</p> <p>21 because I believe it's important.</p> <p>22 And I've been public with that in addition</p> <p>23 to those private discussions that it's very</p> <p>24 important that they have a seat at the table so</p> <p>25 their voice can be heard during this process and</p>

<p style="text-align: right;">Page 117</p> <p>1 they can have adequate legal representation. So</p> <p>2 that would be one track in terms of that.</p> <p>3 In terms of the pension liabilities</p> <p>4 themselves, there was discussion about the funding</p> <p>5 in terms of the actuarial assessment of the pension.</p> <p>6 The stated numbers according to the review team and</p> <p>7 the other reports was approximately three and a half</p> <p>8 billion dollars. Again, there was work to be done</p> <p>9 following that to say -- I can't remember if</p> <p>10 Milliman or whoever was doing the report, to do an</p> <p>11 assessment, other people are doing assessments,</p> <p>12 there's a real issue of the valuation of the pension</p> <p>13 plans and how the pension plans were operated.</p> <p>14 Again, there's many questions. Again,</p> <p>15 there's other litigation going on about 13 Month</p> <p>16 Checks.</p> <p>17 Q. Okay. But it's pretty clear, isn't it, from the</p> <p>18 question and answer that was posed to Mr. Orr that</p> <p>19 he recalls a conversation in one way or another</p> <p>20 where there's an advantage to a Chapter 9 filing?</p> <p>21 He's not talking about I understand the</p> <p>22 advantage of then you can deal with the retirees</p> <p>23 because you set up a committee and you have somebody</p> <p>24 to bargain with. I get that. But he's answering</p> <p>25 affirmatively a question that just ties the</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Do you recall anything anymore specific than that</p> <p>2 that would relate at all to Mr. Orr's view that the</p> <p>3 discussion related to getting out of the pension</p> <p>4 obligations that the City owed or not?</p> <p>5 A. Again, in terms of looking at it, there could be --</p> <p>6 this is -- are there other options or alternatives</p> <p>7 in terms of looking at the pension plans. Again,</p> <p>8 waiting for an assessment of how these reports come</p> <p>9 back, and what I hope could be mediations during</p> <p>10 this process.</p> <p>11 Are there other things possible in terms of</p> <p>12 continuing the existing pension plans, looking at</p> <p>13 alternatives to the pension plan versus health care</p> <p>14 liabilities or other liabilities. Again, this is</p> <p>15 where I view it as hopefully an open discussion that</p> <p>16 would be reviewed by a judge because this then gets</p> <p>17 into legal opinions as to the relative class of</p> <p>18 different types of creditors.</p> <p>19 And this is beyond my area of expertise.</p> <p>20 One of my concerns about not going into bankruptcy,</p> <p>21 wanting to avoid it, is I was concerned you could</p> <p>22 have less flexibility in bankruptcy than outside</p> <p>23 because if mutual parties agreed and everyone agreed</p> <p>24 you could have a resolution.</p> <p>25 Q. Well, in terms of your background, you did -- you've</p>
<p style="text-align: right;">Page 118</p> <p>1 Chapter 9 filing to getting out of pension</p> <p>2 obligations.</p> <p>3 Do you recall any conversation you had with</p> <p>4 Mr. Orr in any way, shape or form that related to</p> <p>5 that subject; that is, Chapter 9 would give you some</p> <p>6 advantages vis-a-vis getting out of pension</p> <p>7 obligations that another route would not have?</p> <p>8 MS. NELSON: Objection; asked and answered.</p> <p>9 Go ahead, answer it again.</p> <p>10 BY MR. WERTHEIMER:</p> <p>11 Q. Go ahead.</p> <p>12 A. Yeah, the context of something that would -- could</p> <p>13 be viewed as a positive during the process is it</p> <p>14 could be -- there could be certainty as to</p> <p>15 resolution by going through a bankruptcy in the</p> <p>16 sense that the judge addressing the plan and</p> <p>17 approving the plan could resolve it as opposed to</p> <p>18 having multiple continuing lawsuits that could go on</p> <p>19 even if it was done in a consensual fashion if some</p> <p>20 party didn't agree or some party had a different</p> <p>21 version; that one of the potential advantages of</p> <p>22 bankruptcy, again viewing bankruptcy as a last</p> <p>23 resort, could be is there could be more a finality</p> <p>24 of a resolution to this issue as opposed to having</p> <p>25 lawsuits continue for multiple years.</p>	<p style="text-align: right;">Page 120</p> <p>1 graduated from law school, correct?</p> <p>2 A. Thank you.</p> <p>3 Q. I meant it -- I phrased it that way only because I</p> <p>4 understand that you've not --</p> <p>5 A. I've never --</p> <p>6 Q. You don't practice law, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Or have never practiced law.</p> <p>9 A. Yes.</p> <p>10 Q. Sorry for wording. Unintentional.</p> <p>11 At the time you were talking to Emergency</p> <p>12 Manager Orr between the time he's an emergency</p> <p>13 manager and you file Chapter 9 --</p> <p>14 A. Yes.</p> <p>15 Q. -- you knew, did you not, that Article 9 Section 24</p> <p>16 of the State Constitution existed?</p> <p>17 A. Yes.</p> <p>18 Q. And that it provided certain rights for pensioners?</p> <p>19 A. Yes.</p> <p>20 Q. Didn't you also know at that point in time that the</p> <p>21 best way to reconcile Article 9 Section 24 -- let me</p> <p>22 rephrase it.</p> <p>23 Didn't you know at the time you were</p> <p>24 talking to Mr. Orr that bankruptcy was the only</p> <p>25 place where you could at least even arguably, in the</p>

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<p>1 words of Mr. Orr, trump that state constitutional 2 provision? Didn't you kind of know that as a 3 general matter? 4 A. No. 5 Q. Okay. Did you think there were other places where 6 you could -- other ways in which you could trump 7 Article 9 Section 24 other than getting the 8 agreement of the retirees, which you've acknowledged 9 had not happened and was going to be very difficult 10 given trying to deal with thousands of people 11 outside the bankruptcy arena? 12 A. I'm trying to see if that was a yes no question or 13 you were asking for -- 14 (Reporter read pending question.) 15 MS. NELSON: Objection; form, foundation, 16 use of the word trump. You can answer the question 17 if you can. 18 THE WITNESS: Yeah, in terms of one area 19 that this is a legal question that I thought would 20 be good to get resolved and could be resolved inside 21 or outside of bankruptcy. I don't believe it had to 22 go to bankruptcy to solve the question, and that is 23 in regard to what the constitutional provision 24 actually says which treats it as a contractual 25 obligation, which in many cases -- we've seen cases</p>	<p>1 not? That is, that there was going to be a date at 2 which the judge would make a preliminary decision as 3 to the issues in front of her? 4 A. A preliminary decision on an injunction is much 5 different than an adjudication of a legal issue that 6 would be resolved through a court trial process. 7 Q. But you did know that there would be a state court 8 resolution -- that the issue you were concerned 9 with, that is the relationship between Article 9 10 Section 24 of the State Constitution and these 11 efforts to try and bring the City back, were going 12 to be resolved in state court based on these 13 lawsuits if nothing else was done; did you not? 14 A. That could take a year or longer to get that 15 resolution. 16 Q. I didn't -- I did not ask you any question about 17 length. I asked you whether you didn't know as 18 someone trained in the law and knowing that these 19 suits were pending and knowing kind of generally 20 what they were about, you knew that the state courts 21 were dealing with the issue? 22 A. I knew I would not get a short-term final answer. 23 Q. You did understand that in -- and then a few days 24 after those first two suits were filed, just so 25 we've got the record -- and your counsel is correct.</p>
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<p>1 with emergency managers they could set aside 2 contractual obligations. 3 BY MR. WERTHEIMER: 4 Q. Well, let's move to that. If you were looking for a 5 legal answer, you knew as of July 3rd or shortly 6 thereafter that you were going to get a legal answer 7 in state court; did you not? 8 A. I was not going to speculate as to the timing of how 9 State lawsuits get resolved. 10 Q. Well, you knew, did you not, that the Flowers 11 plaintiffs filed their suit on July 3rd. You knew 12 that shortly after that; did you not? 13 A. Yes. 14 Q. I mean -- 15 A. Or one of those. 16 Q. -- it was all over the press? 17 A. Yes. 18 Q. And that Webster and another group of individuals 19 filed suit the same day, July 3rd, correct? 20 A. Yes. 21 Q. It was also all over the papers that the same day 22 that suit was filed Judge Aquilina signed orders to 23 show cause why injunctive relief should not issue 24 and scheduled those hearings for July 22nd. 25 You knew that at least generally; did you</p>	<p>1 Those two suits were against you as the Governor, 2 not personally, and the State Treasurer. 3 And then a few days later the pension 4 funds, or whatever the technical name is for them, 5 filed a lawsuit that did include Mr. Orr. Do you 6 recall that? 7 A. Yes. 8 Q. And then at that point there were multiple suits 9 pending? 10 A. Yes. 11 Q. Correct? 12 A. Yes. 13 Q. And did you understand that all -- each of those 14 suits dealt one way or another with Article 9 15 Section 24 of the State Constitution; that is, the 16 pension issue? 17 A. Yes. 18 Q. Okay. Between the time that those suits were filed 19 and the filing of the bankruptcy, which is about two 20 weeks plus a day or two, did you have any 21 discussions with anyone about what the likely 22 outcome of those cases would be on the merits; that 23 is, on the issue of does Article 9 Section 24 apply 24 even if the State goes into bankruptcy? 25 MS. NELSON: I'm going to object to the</p>

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<p>1 extent that it calls for a discussion of</p> <p>2 conversations he had with his legal counsel, as</p> <p>3 those are attorney-client privilege.</p> <p>4 BY MR. WERTHEIMER:</p> <p>5 Q. Outside of conversations you had with attorneys</p> <p>6 present, did you have any conversations -- well, let</p> <p>7 me ask specifically.</p> <p>8 Did you have any conversations with</p> <p>9 Treasurer Dillon without attorneys present about</p> <p>10 what the chances were as to the results of these</p> <p>11 state court suits?</p> <p>12 A. No, I don't recall.</p> <p>13 Q. Did you have conversations with anyone else</p> <p>14 excluding conversations you had either with</p> <p>15 attorneys or with attorneys present between the time</p> <p>16 those suits were filed and the filing of the</p> <p>17 bankruptcy?</p> <p>18 A. I'm sorry, without attorneys present?</p> <p>19 Q. Without attorneys present.</p> <p>20 A. Yeah, I don't recall.</p> <p>21 Q. Okay. You did know, did you not, shortly after</p> <p>22 those suits were filed, it was all over the papers,</p> <p>23 that Judge Aquilina was going to hold a hearing on</p> <p>24 whether to issue an injunction Monday, July 22nd;</p> <p>25 did you not?</p>	<p>1 MR. WERTHEIMER: I'm sorry, I apologize,</p> <p>2 yes.</p> <p>3 MS. NELSON: I don't have Exhibit 6.</p> <p>4 MR. WERTHEIMER: You will.</p> <p>5 MS. NELSON: And would you please show it</p> <p>6 to the Governor?</p> <p>7 MR. WERTHEIMER: Yeah, sure. Absolutely.</p> <p>8 BY MR. WERTHEIMER:</p> <p>9 Q. Okay.</p> <p>10 A. Yes.</p> <p>11 Q. That's consistent with your memory?</p> <p>12 A. Yes.</p> <p>13 Q. And this is the document or something like it is</p> <p>14 what you were just referring to?</p> <p>15 A. Yes.</p> <p>16 Q. Would I be correct in reading the upper right</p> <p>17 V71713 is indicating that this document was prepared</p> <p>18 on that date? Is that what that is?</p> <p>19 A. I can't speak to that.</p> <p>20 Q. Oh, okay. You don't know?</p> <p>21 A. Yeah, I didn't do the document so I can't speak to</p> <p>22 that.</p> <p>23 Q. You -- this is a normal document that is used in</p> <p>24 your role as Governor to deal with --</p> <p>25 A. I would say this was not a normal circumstance so</p>
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<p>1 A. Yes.</p> <p>2 Q. And the initial plan was to file the bankruptcy</p> <p>3 Friday the 19th; was it not?</p> <p>4 A. There was a timetable for communications that said</p> <p>5 it would be on Friday the 19th.</p> <p>6 Q. And that timetable came out of your office or was</p> <p>7 done for you --</p> <p>8 A. Yes.</p> <p>9 Q. -- as the Governor of the State, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And that timetable was written up on the 17th, was</p> <p>12 it not, at least one version of it?</p> <p>13 I've got it here as an exhibit. I can show</p> <p>14 you if -- I'm not trying to --</p> <p>15 A. No, I don't -- I -- that's fine. I would say yes.</p> <p>16 Q. Okay. Fair enough.</p> <p>17</p> <p>18 (Deposition Exhibit 6 and 7 marked.)</p> <p>19</p> <p>20 MR. WERTHEIMER: And let's just -- I'll</p> <p>21 move the admission of Exhibit 6, Margaret.</p> <p>22 MS. NELSON: May I see Exhibit 6?</p> <p>23 MR. WERTHEIMER: That's the one I think you</p> <p>24 took.</p> <p>25 MS. NELSON: No, you gave me Exhibit 7.</p>	<p>1 this would not be a normal document.</p> <p>2 Q. Okay. The only reason I ask that is I did see some</p> <p>3 other kind of rollout documents.</p> <p>4 A. Yeah.</p> <p>5 Q. For example, there's a similar document, is there</p> <p>6 not, for the June 14th creditors proposal that</p> <p>7 Mr. Orr was coming out with? There's a similar</p> <p>8 document from your end; is there not?</p> <p>9 A. Yeah. I'm not aware of that.</p> <p>10 Q. Oh, okay. Fair enough. Fair enough.</p> <p>11 A. Yeah.</p> <p>12 Q. So you don't know whether the 717 up in the upper</p> <p>13 right is the normal place that the author of the</p> <p>14 document would advise people reading it as to its</p> <p>15 date of its origin?</p> <p>16 A. Yeah, I'd have to say I don't know.</p> <p>17 Q. You don't know. Okay.</p> <p>18 In any event, the document gives a lot of</p> <p>19 detail as to what's going to happen before and after</p> <p>20 this filing, which the document assumes is going to</p> <p>21 be on the 19th, correct?</p> <p>22 A. Uh-huh. Yes.</p> <p>23 Q. Now, there are -- were press reports that indicated</p> <p>24 that the reason for the 19th filing was to have it</p> <p>25 precede the 22nd hearing in front of Judge Aquilina.</p>

<p style="text-align: right;">Page 129</p> <p>1 Do you have any knowledge first or 2 secondhand as to whether that is true or not? 3 A. I don't recall that. 4 Q. Do you recall a reason that the 19th was selected as 5 the date that Mr. Orr would file bankruptcy? 6 A. One of the factors most likely was probably my 7 schedule, because this was a major media rollout, in 8 terms of availability. 9 Q. Okay. 10 A. At that -- the letter was coming and I wanted time 11 to contemplate and then we would look at the 12 schedule to say when is there a good opportunity to 13 have good communications. 14 Q. Leaving aside conversations you had with your 15 attorneys -- 16 A. Uh-huh. 17 Q. -- in the days preceding the 17th say, say earlier 18 that week -- 19 A. Yeah. 20 Q. -- were you privy to any conversations where the 21 idea was thrown out that if we have the filing on 22 the 19th that would oust Aquilina of jurisdiction on 23 the 22nd? Do you understand what I'm asking, or 24 words to that effect? 25 A. Yeah, I don't recall it.</p>	<p style="text-align: right;">Page 131</p> <p>1 A. Well, you did ask me. You said they were in the 2 courtroom, did then I act. And I acted prior to 3 them being in the courtroom. 4 Q. No. Okay. Fair enough. 5 A change was made between the 19th and the 6 18th as to the filing itself. You understand that? 7 A. Uh-huh. 8 Q. Correct? 9 A. Yes. 10 Q. And I'll represent to you that at Mr. Orr's 11 deposition he confirmed that the typed in date of 12 the 19th on the bankruptcy petition, the handwritten 13 eight was his handwriting. 14 Do you know anything about why the change 15 was made from the 19th to the 18th? 16 A. Yes. 17 Q. What do you know about it? Just tell me. 18 A. I made the decision that I was comfortable in my 19 conclusion that it was appropriate to file. 20 When the letter came to me on the 16th in 21 terms of recommending bankruptcy, I had set aside to 22 say I wanted an extended period of time to review 23 and to contemplate the situation. So I actually set 24 aside enough time that would have led to the Friday 25 morning situation to say I wanted more than one</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. You don't recall? 2 A. And again, that would be -- this is where we're back 3 to if there were other discussions, it would've been 4 attorney-client privilege, but I don't recall even 5 in that context. 6 Q. We know that, in fact, the filing was made on the 7 18th? 8 A. Uh-huh. 9 Q. Correct? 10 A. Correct. 11 Q. That would be an unusual circumstance; would it not? 12 That is, that you put together this very detailed 13 rollout down to what's going to happen at 11 a.m. a 14 couple days later and what's happening at noon and 15 1:30. It would be rare in terms of your work as 16 Governor for a significant event like this for the 17 date to move at the last minute; would it not? 18 A. Well, this is a unique circumstance. 19 Q. Yeah. On that we agree. 20 Was the unique circumstance the fact that 21 the litigants in the three cases were in court on 22 the 18th in front of Judge Aquilina in the afternoon 23 seeking emergency injunctive relief? 24 A. I had signed my letter prior to that. 25 Q. It's not what I asked you, Governor.</p>	<p style="text-align: right;">Page 132</p> <p>1 night to sleep on this because the importance of 2 this act. 3 And as I proceeded through the thought 4 process to say do I concur, am I going to authorize 5 the bankruptcy, I started discussions with my legal 6 counsel on how we would prepare a letter, how we 7 would go through that process and my thought 8 process, and I felt I didn't need to wait. I had 9 made my decision, I had consulted with legal 10 counsel, we had prepared a letter authorizing 11 bankruptcy, and I said we should just go ahead and 12 get this done. 13 Q. And as far as you know, that decision, the fact that 14 there was -- were requests for immediate injunctive 15 relief on that day in state court had nothing to do 16 with moving up the time? 17 A. People showed up in state court after that, and what 18 I would say is the consideration I had was the 19 filing of -- the lawsuits being filed in the prior 20 week or two weeks had some impact on my 21 decision-making process. 22 Q. Right. 23 A. And the reason I said that is because I could see 24 lawsuits being filed not only on pension issues but 25 could be filed by other creditors, by financial</p>

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<p>1 institutions, by many other parties to say it is 2 clear there's a breakdown of what I believe were 3 good faith negotiations, and given that there is a 4 breakdown of good faith negotiations we were at that 5 last resort point. 6 And this is a financial emergency, I'm 7 concerned about the citizens of Detroit, and I was 8 going to move forward with this because I'm stepping 9 up for the citizens of Detroit and Michigan. 10 Q. You've talked generally about the lawsuits and the 11 role they played? 12 A. Uh-huh. 13 Q. I'm trying to get your recollection specifically as 14 to the fact that parties were in court on the 18th 15 and that the Pension Board was there formally with a 16 request for an injunction that day. 17 A. That was after the fact, and I don't speculate on 18 what happens in court hearings. 19 Q. What is your basis for saying that that was after 20 the fact? 21 A. Well, you told me that. 22 Q. No. 23 MS. NELSON: I'm going to object at this 24 point. He's asked and answered. 25 Your question was was the unique situation</p>	<p>1 least in one of those lawsuits that a request was 2 going to be made that afternoon. 3 MS. NELSON: Objection. 4 BY MR. WERTHEIMER: 5 Q. And you moved up your filing -- or you moved up -- 6 well, the filing was moved up from the 19th to the 7 18th. 8 MS. NELSON: Objection; assumes facts not 9 in evidence. There had not been any motion filed 10 with the -- if you're referring to the General 11 Retirement System case, that was filed on the 17th, 12 but there had not been a TRO filed with the 13 Complaint, and that was not filed until late in the 14 afternoon on -- 15 MR. WERTHEIMER: Margaret -- 16 MS. NELSON: I'm correcting your facts. 17 There had not been a TRO filed the day before when 18 the General Retirement System Complaint was filed. 19 MR. GALLAGHER: Objection to counsel's 20 testimony. 21 MR. WERTHEIMER: Margaret. 22 MS. NELSON: I'm objecting to form and 23 foundation and speculation. 24 MR. WERTHEIMER: No, you're providing 25 testimony and you're providing facts which are not</p>
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<p>1 the result of the fact that attorneys were in the 2 courtroom seeking a TRO and he answered no and he 3 signed the authorization before the attorneys were 4 in the courtroom. 5 So what is it that you're now asking? He's 6 already answered that question, so asked and 7 answered. 8 MR. WERTHEIMER: Are you done? 9 MS. NELSON: I'm done. 10 MR. WERTHEIMER: Okay. 11 BY MR. WERTHEIMER: 12 Q. Do you have any -- are there any documents that the 13 State has that can confirm the time of day that your 14 letter was signed on the 18th? Do you know? 15 A. I'm happy to attest when I signed that. 16 Q. You already have. 17 A. I'm under oath. I signed that -- 18 Q. What time did you sign it? 19 A. I signed it in the afternoon. 20 Q. What time in the afternoon? 21 A. It was earlier rather than later, but I don't have 22 the specific time. 23 Q. Okay. I believe the Pension Board had filed their 24 papers the day before and were scheduled to go into 25 court that afternoon. So it was out there that at</p>	<p>1 accurate. 2 MS. NELSON: Well, you are too, 3 Mr. Wertheimer. So if you're going to ask 4 speculative inappropriate questions, at least have 5 your facts correct. 6 So my objection is form, foundation, calls 7 for speculation. 8 The Governor has answered this question in 9 terms of his understanding of the timing. 10 MR. WERTHEIMER: Margaret, I would not 11 otherwise testify, but I will tell you that the 12 Pension Board was in front of Aquilina in the 13 morning and that I drove from Detroit to Lansing and 14 got there about three in the afternoon; that the 15 AG's office asked us to please delay, and we ended 16 up in front of Judge Aquilina eight minutes after 17 the bankruptcy petition was filed, and I'm entitled 18 to find out from the Governor whether all that is 19 coincidental. 20 MS. NELSON: Well, I will correct you -- 21 MR. WERTHEIMER: Now, if you're done, I'll 22 ask -- 23 MS. NELSON: No. Well, I will correct you 24 then also because the AG's office did not learn of 25 the TRO applications and anybody coming to court</p>

<p style="text-align: right;">Page 137</p> <p>1 until after 3:00 in the afternoon.</p> <p>2 It was approximately 3:05 when I received</p> <p>3 the phone call that attorneys were coming to court</p> <p>4 to present motions for TRO to the judge. There was</p> <p>5 no conversation or information about anything being</p> <p>6 filed that morning. It was after 3:00 when the call</p> <p>7 was made to our office and attorneys were sent over</p> <p>8 to respond if appropriate.</p> <p>9 BY MR. WERTHEIMER:</p> <p>10 Q. What time did you sign on the 18th, Governor?</p> <p>11 A. Again, the specific time -- one of the ways to look</p> <p>12 at that is I would have signed it prior to the email</p> <p>13 transmission to Kevyn Orr.</p> <p>14 Q. And do you recall when the email transmission was?</p> <p>15 A. No, but that's --</p> <p>16 Q. That's somewhere that we can find out?</p> <p>17 A. Yes. Yes.</p> <p>18 Q. Okay. Fair enough.</p> <p>19 When was it that Attorney General Schuette</p> <p>20 called you to let you know what legal position he</p> <p>21 was going to be taking in the bankruptcy? He filed</p> <p>22 it August 19th, if that helps.</p> <p>23 A. It would have been a couple -- again, within the two</p> <p>24 or three days before that.</p> <p>25 Q. I take it it sounds like it's kind of a courtesy</p>	<p style="text-align: right;">Page 139</p> <p>1 Orr would be required to propose a plan consistent</p> <p>2 with Article 9 Section 24?</p> <p>3 Did you know that or anything like it any</p> <p>4 time before he made this courtesy call to you?</p> <p>5 A. Yeah, I'm not being difficult. I started becoming</p> <p>6 more aware as the call was being scheduled. Why was</p> <p>7 the Attorney General wanting to talk, because I was</p> <p>8 out on the road.</p> <p>9 Q. Okay. So you may have learned just before?</p> <p>10 A. Again, it's like I was traveling in the upper</p> <p>11 peninsula, as I recall, and I need to talk to</p> <p>12 call -- I need to talk to the Attorney General.</p> <p>13 That gets my attention.</p> <p>14 Q. You knew before this that this was a serious issue,</p> <p>15 did you not, that is how -- what's the interplay</p> <p>16 between the State constitutional provision and any</p> <p>17 potential filing? As a general matter, you knew</p> <p>18 that; did you not?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever consult with the Attorney General about</p> <p>21 that?</p> <p>22 A. Not directly.</p> <p>23 Q. Did you consult indirectly?</p> <p>24 A. Again, my legal counsel may have had discussions. I</p> <p>25 didn't participate in those.</p>
<p style="text-align: right;">Page 138</p> <p>1 call?</p> <p>2 A. It was a courtesy call because we have a working</p> <p>3 relationship.</p> <p>4 Q. Had you ever consulted with Attorney General</p> <p>5 Schuette about this issue of whether Article 9</p> <p>6 Section 24 would apply in bankruptcy before that</p> <p>7 courtesy call?</p> <p>8 A. I don't recall.</p> <p>9 Q. You may have?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall whether when Attorney General Schuette</p> <p>12 made his position public or when he told you about</p> <p>13 it that you were surprised in any way?</p> <p>14 In other words, was it news to you at that</p> <p>15 point that the Attorney General was going to take</p> <p>16 the position that Article 9 Section 24 applied in</p> <p>17 bankruptcy?</p> <p>18 A. I would say -- could you repeat the question?</p> <p>19 Q. Do you recall whether --</p> <p>20 A. Yeah.</p> <p>21 Q. -- you knew any time before this courtesy call that</p> <p>22 the Attorney General's position was that Article 9</p> <p>23 Section 24 applied in bankruptcy; in other words,</p> <p>24 that bankruptcy would not trump it but that rather,</p> <p>25 according to the Attorney General, Emergency Manager</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Do you recall asking either directly or indirectly</p> <p>2 for the Attorney General's opinion?</p> <p>3 A. I don't recall.</p> <p>4 Q. Could you identify Exhibit 7 for me?</p> <p>5 A. This is an email from Greg Tedder to me regarding a</p> <p>6 Power Point presentation that Kevyn Orr was going to</p> <p>7 use as part of his 45-day plan that he was going to</p> <p>8 do I believe from later on it appears two public</p> <p>9 meetings.</p> <p>10 Q. And would I be correct in reading it as indicating</p> <p>11 that you were involved in detail to the extent that</p> <p>12 you didn't like a particular slide; that is, slide</p> <p>13 22?</p> <p>14 A. I believe, if my email is incorporated in this, that</p> <p>15 they --</p> <p>16 Q. I think it is.</p> <p>17 A. Yeah. They sent me the Power Point presentation and</p> <p>18 I made a very brief review and just gave them three</p> <p>19 points of feedback.</p> <p>20 Q. And those are indicated on the exhibit?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you recall communications you had with</p> <p>23 Treasurer Dillon in early July after the suits were</p> <p>24 filed but before the bankruptcy?</p> <p>25 A. I don't recall.</p>

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<p>1 MS. NELSON: Which one is which?</p> <p>2 MR. WERTHEIMER: Eight is July 8th.</p> <p>3</p> <p>4 (Deposition Exhibit 8 and 9 marked.)</p> <p>5</p> <p>6 BY MR. WERTHEIMER:</p> <p>7 Q. Since we're doing it this way, why don't you take a</p> <p>8 look at Exhibit 8, Governor, please. It's a July 8</p> <p>9 email that was produced in discovery from Treasurer</p> <p>10 Dillon to you.</p> <p>11 Might as well just read it and then I'll</p> <p>12 ask you a question or two about it.</p> <p>13 A. Okay. Want me --</p> <p>14 Q. Yes. If you would, just read it to yourself.</p> <p>15 A. Thanks. I was trying to figure out what --</p> <p>16 Q. No, that's fine. I understand.</p> <p>17 As to the July 8 email, do you recall</p> <p>18 receiving it?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what -- can you explain to us what the</p> <p>21 reference is to the pension fund recent suits</p> <p>22 against he and you? Is that a reference to the</p> <p>23 suits we've been talking about?</p> <p>24 A. I would assume so, but I can't definitively say that</p> <p>25 because I didn't write the email.</p>	<p>1 sentence and third sentence: In my view, which is</p> <p>2 Andy Dillon speaking, it's way too early in the</p> <p>3 process to respond to hypothetical questions, remain</p> <p>4 in many ways at the informational stage.</p> <p>5 Q. Well, isn't that just his effort to kind of deal</p> <p>6 with the politics and say there's no reason you have</p> <p>7 to get out there publicly and say that pensions are</p> <p>8 going to be reduced?</p> <p>9 A. Not necessarily. Again, this is --</p> <p>10 Q. Okay. Isn't that one reading of his --</p> <p>11 A. I'm not going to speculate on his reading.</p> <p>12 Q. All right.</p> <p>13 A. I'm saying this is the information from consultants</p> <p>14 that's in the early stages. It's informational, and</p> <p>15 he was giving me a heads up to know that there could</p> <p>16 be an issue ultimately coming about because of work</p> <p>17 of consultants that had not been fully reviewed and</p> <p>18 vetted.</p> <p>19 Q. Do you recall this second email?</p> <p>20 A. Yes.</p> <p>21 Q. Did you have any conversations with Treasurer Dillon</p> <p>22 about either of these emails at around this time?</p> <p>23 A. As I mentioned earlier --</p> <p>24 Q. I'm sorry, go ahead.</p> <p>25 A. I recall a phone call that night of the 8th after</p>
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<p>1 Q. Fair enough. Did you talk to Treasurer Dillon about</p> <p>2 it?</p> <p>3 A. Yes, I believe so.</p> <p>4 Q. Did the conversation relate at least in part to</p> <p>5 those lawsuits?</p> <p>6 A. No. Well, it was really he was just re -- as I</p> <p>7 recall, he was recalling what's in that second</p> <p>8 paragraph, just to say that there's an issue here,</p> <p>9 that the consultants were coming up with a different</p> <p>10 answer.</p> <p>11 Q. And he was indicating the pensions -- the</p> <p>12 consultants were saying that pensions were going to</p> <p>13 have to be cut significantly; was he not?</p> <p>14 A. Again, yes.</p> <p>15 Q. Okay. And you knew at that point in time, did you</p> <p>16 not, that the only practical way you were going to</p> <p>17 be able to cut those pensions would be by filing a</p> <p>18 Chapter 9; did you not?</p> <p>19 At that point, in other words, July 8</p> <p>20 Treasurer Dillon tells you we're going to have to</p> <p>21 cut pensions significantly. You knew that that</p> <p>22 meant you've got to file Chapter 9; did you not?</p> <p>23 A. I wouldn't necessarily conclude that. I would, in</p> <p>24 fact, cite the second email you gave us, Exhibit 9,</p> <p>25 towards the bottom where the bottom paragraph second</p>	<p>1 the first email.</p> <p>2 Q. Go ahead.</p> <p>3 A. Sort of reiterating what's in the email, saying he's</p> <p>4 concerned about this, and then the second email</p> <p>5 said -- sort of answered a lot of the questions to</p> <p>6 say that the meeting's going ahead and there's work</p> <p>7 to be done, that we're in the early stages.</p> <p>8 Q. Okay. He's calling you?</p> <p>9 A. I believe he called me.</p> <p>10 Q. Okay.</p> <p>11 A. I can't tell you whether I had to call him back or</p> <p>12 not but I believe we had a conversation that night.</p> <p>13 Q. He initiated it as a followup to his first email?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. And then he sent you another email the next day?</p> <p>16 A. Sort of answering a number of questions he raised</p> <p>17 the night before and in the email.</p> <p>18 Q. Fair enough. And there were no other lawsuits that</p> <p>19 you can think of that were out there that he could</p> <p>20 have been referencing as far as you know than the</p> <p>21 three we've been talking about?</p> <p>22 A. As far as I know.</p> <p>23 Q. Okay. Just a couple more questions.</p> <p>24 We have requested what's called a 30(b)(6)</p> <p>25 deposition of the State; that is, that the State</p>

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<p>1 produce a witness -- one or more witnesses on 2 various issues. And on a couple of them the State 3 has indicated that they -- without designating you 4 as a 30(b)(6) witness and requiring you to do the 5 kind of preparation that would be involved with that 6 otherwise, that you would be the best person to ask 7 these questions.</p> <p>8 A. Okay.</p> <p>9 Q. So I'd like to ask the question exactly as it's 10 framed in the deposition notice and have you answer 11 that question as best you can.</p> <p>12 A. Okay.</p> <p>13 Q. Okay? The question is or the matter for examination 14 is "The reason or reasons the Governor decided not 15 to place contingencies on this bankruptcy filing, as 16 expressly permitted by Section 18(1) of 2012 Public 17 Act 436; particularly why no contingency related to 18 Article 9 Section 24 of the Michigan Constitution 19 was placed on the filing.</p> <p>20 Can you answer that?</p> <p>21 A. Yes. I had -- I placed no contingencies because I 22 had a concern that it would add complexity, 23 confusion or delay to the bankruptcy process given 24 that this is an emergency situation.</p> <p>25 It's about taking care of the best</p>	<p>1 A. No, I didn't believe that. Again, you asked my 2 question. I answered it.</p> <p>3 Q. I'm just not sure I got an answer to that. Could 4 you -- and I apologize if I'm asking the same 5 question, but --</p> <p>6 A. No, I didn't believe -- again, I believed -- I 7 didn't -- state your question again so we can make 8 sure we get this.</p> <p>9 Q. Didn't you understand at the time you authorized the 10 filing that if you had placed a contingency on the 11 filing telling the Detroit emergency manager that in 12 bankruptcy, for example, consistent with Schuette's 13 opinion, that any plan he proposed would have to 14 recognize the applicability of Article 9 Section 24?</p> <p>15 Didn't you understand that if you did 16 something like that it would make Emergency Manager 17 Orr's job more difficult?</p> <p>18 A. I did not consider that.</p> <p>19 Q. Okay. What did you consider relative to not 20 including Article 9 Section 24 as a contingency?</p> <p>21 A. I viewed it as is that's something that the legal 22 questions were being appropriately framed by 23 lawsuits, by parties, by various people being 24 represented in this process, and that as Governor of 25 the State of Michigan I take my responsibility</p>
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<p>1 interests of the citizens of Detroit. And the 2 reason I felt confident and comfortable in doing 3 that act is why we reviewed -- I reviewed with my 4 legal counsel and added that statement to say any 5 plan that has to come out of this process of the 6 bankruptcy has to be legally executable.</p> <p>7 Q. That's going to be the next question, but okay.</p> <p>8 Let me just ask a followup.</p> <p>9 A. Sorry I was giving you --</p> <p>10 Q. That's okay. We're on the same wavelength.</p> <p>11 At the time you authorized the filing, you 12 knew, did you not, that if you placed the 13 contingency relating to Article 9 Section 24 on the 14 filing it would make it more difficult for the 15 Detroit emergency manager to deal with the pension 16 issue; did you not?</p> <p>17 A. I did not know that. That would be a legal 18 conclusion.</p> <p>19 Q. But didn't you generally understand that?</p> <p>20 I understand it technically may be a legal 21 conclusion, but didn't you understand that if you 22 had done a contingency that said as to this 3.5 23 billion in unfunded liabilities, the Michigan 24 Constitution says you're going to have to -- you're 25 not going to be able to get any relief from that?</p>	<p>1 seriously. It's to execute the laws of the State of 2 Michigan.</p> <p>3 That these were multiple legal questions 4 that were being framed through multiple lawsuits 5 that were going to continue in the bankruptcy 6 process, and I thought the best answer is the 7 judicial branch should be resolving these questions 8 to give me clarity as to best how to follow through 9 in implementing what comes out of this process.</p> <p>10 Q. You did not check with Attorney General Schuette at 11 the time you filed to determine what his view was as 12 to whether any contingency related to Article 9 13 Section 24 should put -- should be put on your 14 authorization, did you?</p> <p>15 A. I did not.</p> <p>16 Q. The -- back to the 30(b)(6) Notice.</p> <p>17 A. Uh-huh.</p> <p>18 Q. And you partially answered this, but again, I think 19 it would be helpful if I just read the question and 20 you answer it in full. And don't assume that you've 21 already answered part of it even though you have.</p> <p>22 A. Okay.</p> <p>23 Q. The reason or reasons the Governor included the 24 following statement in his 18 July 2013 25 authorization to commence Chapter 9 bankruptcy</p>

<p style="text-align: right;">Page 149</p> <p>1 proceeding "Federal law already contains the most 2 important contingency - a requirement that -- a 3 requirement that the plan be legally executable, 4 11 USC section number." 5 Can you answer that? 6 A. Yeah. I thought it was important to include that 7 because coming out of this process, I thought the 8 bankruptcy judge would go through an analysis and 9 make decisions that would come out with a plan that 10 was appropriate in the context of the legal process 11 in terms of answering these difficult legal 12 questions with certainty and resolution, so then 13 there could be a plan because this is a crisis. 14 The City of Detroit is having huge issues, 15 and I wanted to make sure that it was being done in 16 a thoughtful fashion, being reviewed by the 17 judiciary that then could be executed so we could 18 provide the best services to the citizens, take care 19 of the citizens of the State as quickly and as best 20 possible. 21 Q. At the time you put that contingency on -- 22 A. I didn't put a contingency on. 23 Q. I'm sorry. At the time you -- I stand corrected. 24 A. Okay. 25 Q. At the time you made the reference to the federal</p>	<p style="text-align: right;">Page 151</p> <p>1 Q. Well, in the creditor's plan back in June, didn't 2 Emergency Manager Orr make very clear that to the 3 extent the pension benefits were funded that those 4 monies couldn't be touched, which is legally of 5 course correct, but to the extent that they weren't 6 funded that the retirees would become unsecured 7 creditors like everybody else? 8 Wasn't that part of the June presentation? 9 A. The June presentation was to be part of a mutual 10 negotiation that would require consent of all 11 parties. 12 Q. Are you saying -- 13 A. That was not a plan of adjustment and bankruptcy. 14 Q. Are you saying, Governor, that at the time you put 15 this provision in your authorization that you -- 16 that there was some question in your mind as to 17 whether Emergency Manager Orr would honor or not 18 honor Article 9 Section 24 in the bankruptcy? 19 Let me ask it a different way. 20 A. Okay. 21 Q. I think it was a little confusing. 22 Wouldn't you have had every reason to know 23 by the point you put this language in that Emergency 24 Manager Orr was going to propose a plan that did not 25 recognize the fact that pensions could not be</p>
<p style="text-align: right;">Page 150</p> <p>1 law contingency, shall we say -- 2 A. Uh-huh. 3 Q. -- you knew, did you not, that Emergency Manager Orr 4 was publicly stating that federal law would trump 5 the State Constitution? Trump, that that was the 6 word he used. It was in the Free Press, I believe 7 in the News. It was all over. 8 You knew that at the time you thought that 9 this language about federal law being the most 10 important contingency was put in your authorization; 11 did you not? 12 A. Yes. But, ultimately, Judge Rhodes makes that 13 decision, not Kevyn Orr. 14 Q. Did you know at the time that only -- that under 15 Chapter 9 only the debtor can propose a plan? 16 A. Subject to approval by the judge. 17 Q. And the debtor is represented by Kevyn Orr, correct? 18 A. He represents the City of Detroit, yes. 19 Q. And you knew that the debtor was taking the position 20 that the pensions would have to be cut; did you not? 21 A. That's not a correct statement. There had been no 22 plan proposed and there still has not been a plan 23 proposed. Until there is a plan proposed, it would 24 be speculative on anything with respect to how the 25 City is going to present a plan.</p>	<p style="text-align: right;">Page 152</p> <p>1 reduced because of Article 9 Section 24? 2 A. I don't necessarily come to that conclusion because 3 a plan has not been presented. 4 Q. But this -- the guy who is going to present the plan 5 is publicly stating that federal law trumps 6 Article 9 Section 24. You knew that; did you not? 7 A. Yes. 8 Q. Wouldn't you suppose that that means that one of the 9 reasons -- one of the things that Emergency Manager 10 Orr is going to do in the bankruptcy is make an 11 argument to Judge Rhodes that federal law trumps 12 Article 9 Section 24? 13 A. It is possible for him to make that argument. 14 Again, I view this as legal speculation because 15 there are multiple mediations going on and multiple 16 discussions going on short of going to the judge and 17 asking for opinions. 18 Q. And you now know that that speculation is 19 inconsistent with the Attorney General of the State 20 of Michigan's position, which is that Orr has no 21 right to do that. You know that now; do you not? 22 MS. NELSON: Objection; form, foundation. 23 What do you mean by speculation? 24 MR. WERTHEIMER: I was using the word the 25 Governor used, so I was using however he used it. I</p>

<p style="text-align: right;">Page 153</p> <p>1 was trying to be helpful, Margaret. 2 Can you read it back? Let me just look at 3 it and maybe I can just rephrase it. 4 BY MR. WERTHEIMER: 5 Q. You now know that the Attorney General is of the 6 view that Article 9 Section 24 applies in 7 bankruptcy? 8 A. He filed a brief to that effect. 9 Q. Okay. That's all I have. Thank you. I have no 10 further questions. 11 MS. NELSON: Okay. 12 MR. WERTHEIMER: Just take a minute. I 13 assume there will be other questions. I just want 14 to make sure that I'm done. 15 VIDEO TECHNICIAN: Off the record 16 11:55 a.m. 17 (A brief recess was taken.) 18 19 (Deposition Exhibit 10 was marked.) 20 21 VIDEO TECHNICIAN: Back on the record at 22 11:59 a.m. 23 BY MR. WERTHEIMER: 24 Q. Let me show you what's been marked, Governor, as 25 Exhibit 10. Would you take a look at -- actually,</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. That's not what I asked. 2 A. Yes. 3 MS. NELSON: Here, you have it. 4 BY MR. WERTHEIMER: 5 Q. The communications rollout plan document indicates 6 that the filing was going to be on the 19th but that 7 you were going to sign the letter at 8 p.m. on the 8 18th, correct? 9 A. That's what this exhibit says. 10 Q. All right. And you indicated in earlier testimony 11 when I asked you if you could give me the time that 12 you signed the letter that I should look for the 13 email where you transmitted it. Did you not? 14 A. Yes. 15 Q. Okay. And I have found that email, have I not, or 16 someone on this side has found that email. And it 17 indicates that you sent the authorization letter to 18 Emergency Manager Orr at 7:47 p.m.; does it not? 19 A. Yes. And that's why I wanted to clarify. 20 Apparently, our main transmission would have been 21 earlier in that day and it would have been done by 22 some other means. 23 So I'd want to clarify and correct that to 24 say we should go look to find out when the earliest 25 transmission was.</p>
<p style="text-align: right;">Page 154</p> <p>1 you'll see the -- it's a transmittal letter of your 2 July 18 letter. 3 A. Uh-huh. 4 Q. Are you with me? 5 A. Yes. 6 Q. And you had indicated in your earlier testimony that 7 we should find the email transmission, and I'm 8 wondering if this is it. That is, is this the email 9 transmission where you communicate to Emergency 10 Manager Orr that you have signed the authorization? 11 A. Actually, it would have been much earlier, so this 12 is where -- just to clarify I would say is I 13 don't -- I would have to double-check. Normally, it 14 could have been by email, but it might have been 15 faxed or otherwise communicated, but I know it was 16 much earlier than this during the day because this 17 says 7:47 at night. 18 Q. And it's within 13 minutes of what your rollout 19 communications plan indicates when you're going to 20 sign. That is, it indicates 8 p.m. correct? 21 A. Again, are you going to the earlier exhibit? 22 Q. I'm sorry. That exhibit with the rollout indicates 23 that you're going to actually sign the letter at 24 8 p.m. on the 18th, correct? 25 A. I signed it much earlier than that.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. I agree, and I assume your counsel will do that, and 2 I would make that request on the record that you 3 provide -- 4 A. Yeah. 5 Q. -- whatever documentary support in whatever form it 6 is. 7 A. I apologize for having you go through an effort to 8 find -- 9 Q. That's okay. We need to get straight on it and 10 that's fine. 11 A. Yeah. 12 Q. With that I have nothing further. Thank you, 13 Governor. I appreciate it. 14 MS. NELSON: To the best of my knowledge 15 it's in the production that we sent out. 16 MR. WERTHEIMER: Well, Margaret, no offense 17 but there's X hundred thousand -- 18 MS. NELSON: No, I understand that, but so 19 it has been produced. It's my understanding it has 20 been produced. 21 MR. WERTHEIMER: I am not suggesting that 22 it has not been produced, but it would be helpful 23 if -- 24 MS. NELSON: Hold it. We have a hand up. 25 VIDEO TECHNICIAN: No, I was just moving</p>

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1 the camera.

2 MR. WERTHEIMER: It would be helpful if you
3 could identify it for us. Right now all we have on
4 the record is 7:47 p.m.

5 MS. GREEN: I will say on the record that
6 that email was given to me by Jones Day in response
7 to the request made by Retirement Systems that the
8 City produce the email that transmitted the
9 authorization letter to Kevyn Orr.

10 That was the only email that was
11 specifically produced.

12 MS. NELSON: Well, it might not have been
13 an email. It could have been a fax earlier in the
14 afternoon. So I guess we'll produce the document
15 that we have but obviously it was transmitted before
16 the filing and the filing was at 4:06 p.m.

17 So we'll find it. If you want us to search
18 for it, we will look amongst and get it to you.

19 MR. WERTHEIMER: Why?

20 MS. NELSON: Well, it could have been by
21 other than an email.

22 MR. WERTHEIMER: Margaret, no offense.

23 MS. NELSON: No, I'm saying --

24 MR. WERTHEIMER: We want you to look for
25 it. We now have on the record that the Governor

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1 MS. GREEN: The Retirement Systems join the
2 prior objection and reservation of rights placed on
3 the record earlier. We also received documents late
4 last night from the City, and those documents relate
5 to both City and State officials.

6 To the extent our rights have been
7 prejudiced and those documents reveal a need for
8 further deposition testimony, we hereby join the
9 prior objection placed on the record by counsel.

10 (Deposition concluded at 12:05 p.m.)

11 - - -

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13 (Deposition Exhibit 11 was marked post deposition)
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1 said it was in an email and we have the email being
2 7:47 so I would suggest --

3 MS. NELSON: He just corrected that. He
4 indicated it could have been by some other means and
5 that it was earlier than this time frame, so we'll
6 get it to you.

7 MS. LEVINE: Let's talk for a second. We
8 have a lot of attorneys testifying. I think they
9 should stop it.

10 MS. NELSON: Correct.

11 MS. LEVINE: To the extent that there's a
12 transmittal other than this one that exists, we'll
13 ask the State to produce it to us. In response to
14 the direct request, we've got the production from
15 Jones Day with regard to the transmittal.

16 MR. GADOLA: I'm confident we can do that.

17 MR. SCHNEIDER: That's fine.

18 MR. WERTHEIMER: Thank you.

19 MS. NELSON: Absolutely.

20 MR. WERTHEIMER: Thank you, Governor.

21 THE WITNESS: All done?

22 MR. WERTHEIMER: All done.

23 THE WITNESS: Okay. Thank you.

24 VIDEO TECHNICIAN: Deposition's concluded
25 at 12:04 p.m.

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1 CERTIFICATE

2 STATE OF MICHIGAN }
3 COUNTY OF OAKLAND } SS:

4
5 I, LAUREL A. JACOBY, Certified Shorthand
6 reporter, a Notary Public, hereby certify that I recorded
7 in shorthand the examination of GOVERNOR RICHARD D.
8 SNYDER, the deponent in the foregoing deposition; and that
9 prior to the taking of said deposition the deponent was
10 first duly sworn, and that the foregoing is a true,
11 correct and complete transcript of the testimony of said
12 deponent.

13 I further certify that no request was made for
14 submission of the transcript to the deponent for reading
15 and signature and that no such submission was made.

16 I also certify that I am not a relative or
17 employee of a party or an attorney for a party; or
18 financially interested in the action.

19
20
21 LAUREL A. JACOBY, CSR-5059, RPR

22 Notary Public, Oakland County, Michigan

23 My commission expires: 9/1/18

24 Dated: This 11th day of October, 2013.
25

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EXHIBIT B

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 VIDEOTAPED DEPOSITION 10 11 DEPONENT: KEVYN ORR 12 DATE: Monday, September 16, 2013 13 TIME: 10:08 a.m. 14 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC 15 150 West Jefferson, Suite 2500 16 Detroit, Michigan 17 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (continued): 2 3 LOWENSTEIN SANDLER LLP 4 By: Sharon L. Levine 5 65 Livingston Avenue 6 Roseland, NJ 07068 7 973.597.2374 8 -and- 9 AFSCME 10 By: Michael L. Artz 11 Tiffany Ricci 12 1101 17th Street, NW 13 Suite 900 14 Washington, D.C. 20036 15 202.775.5900 16 Appearing on behalf of AFSCME 17 18 CLARK HILL PLC 19 By: Jennifer K. Green 20 500 Woodward Avenue, Suite 3500 21 Detroit, MI 48226 22 313.965.8274 23 Appearing on behalf of Retirement Systems 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 JONES DAY 4 By: Gregory M. Shumaker 5 Dan T. Moss 6 51 Louisiana Avenue, NW 7 Washington, D.C. 20001.2113 8 202.879.3939 9 Appearing on behalf of the Debtor 10 11 DENTONS 12 By: Anthony B. Ullman 13 620 Fifth Avenue 14 New York, NY 10020.2457 15 212.632.8342 16 Appearing on behalf of Retirees Committee 17 18 COHEN WEISS AND SIMON LLP 19 By: Peter D. DeChiara 20 330 West 42nd Street 21 New York, NY 10036.6979 22 212.356.0216 23 Appearing on behalf of UAW 24 25</p>	<p>1 APPEARANCES (continued): 2 3 WILLIAMS WILLIAMS RATTNER & PLUNKETT PC 4 By: Ernest J. Essad, Jr. 5 380 N Old Woodward Ave Ste 300 6 Birmingham, MI 48009 7 248.642.0333 8 Appearing on behalf of FGIC 9 10 SIDLEY AUSTIN LLP 11 By: Guy S. Neal (appearing via LiveNote Streaming) 12 1501 K St., NW 13 Washington, D.C. 14 202.736.8000 15 Appearing on behalf of National Public Finance 16 Guarantee Corp. 17 18 WINSTON & STRAWN LLP 19 By: Bianca M. Forde (appearing via LiveNote Streaming) 20 200 Park Avenue 21 New York, NY 10166.4193 22 212.294.4733 23 Appearing on behalf of Assured Guaranty Municipal 24 Corp. 25 ALSO PRESENT: Mark Meyers, videographer</p>

			Page 5				Page 7
1	TABLE OF CONTENTS				1	Detroit, Michigan	
2					2	Monday, September 16, 2013	
3	WITNESS		PAGE		3	* * *	
4	KEVYN ORR				4	THE VIDEOGRAPHER: This is tape number one	
5	Examination by Mr. Ullman		7		5	to the videotaped depositions of Kevyn Orr being heard	
6	Examination by Ms. Levine		192		6	before the U.S. Bankruptcy Court, Eastern District of	
7	Examination by Mr. DeChiara		237		7	Michigan, Case Number 0227543.0001. This deposition	
8	Reexamination by Mr. Ullman		277		8	is being held at 150 West Jefferson, Detroit, Michigan	
9	Examination by Ms. Green		279		9	on September 16, 2013 at 10:08 a.m.	
10					10	My name is Mark Meyers, I am the	
11	EXHIBITS				11	videographer, the court reporter is Jeanette Fallon.	
12	NUMBER	IDENTIFICATION	PAGE		12	And will the court reporter please swear in the	
13	Exhibit 1	JD-RD-0000113	24		13	witness.	
14	Exhibit 2	JD-RD-0000303	26		14	KEVYN ORR	
15	Exhibit 3	JD-RD-0000300 through 302	32		15	was thereupon called as a witness herein, and after having	
16	Exhibit 4	JD-RD-0000295 through 296	43		16	first been duly sworn to tell the truth, the whole truth,	
17	Exhibit 5	Text from Article 9, Section 24	52		17	and nothing but the truth, was examined and testified as	
18	Exhibit 6	JD-RD-0000216 through 218	57		18	follows:	
19	Exhibit 7	JD-RD-0000459-464	64		19	EXAMINATION	
20	Exhibit 8	Financial and Operating Plan			20	BY MR. ULLMAN:	
21	May 12, 2013		94		21	Q. Good morning, Mr. Orr.	
22					22	A. Good morning.	
23					23	Q. My name is Anthony Ullman, I represent the Retirees	
24					24	Committee. I'm going to be asking you some questions	
25					25	this morning, as will some others.	

			Page 6				Page 8
1	EXHIBITS				1	A. Okay.	
2	NUMBER	IDENTIFICATION	PAGE		2	MR. ULLMAN: Before we begin I would just	
3	Exhibit 9	Proposal For Creditors			3	like to note for the record that we received the	
4		June 14, 2013	102		4	document production that the City made on Friday and	
5	Exhibit 10	July 16, 2013 Letter from Orr			5	it was in image file, essentially TIF images, over a	
6		to Snyder and Dillon	115		6	hundred thousand pages which were essentially, as the	
7	Exhibit 11	July 18, 2013 Letter from Snyder			7	City knows, very difficult to work with. We obviously	
8		to Orr and Dillon	115		8	have not been able to get through them all in time for	
9	Exhibit 12	July 12, 2013 Letter from DFFA	134		9	this morning's deposition. We're going to continue to	
10	Exhibit 13	July 17, 2013 Letter from Jones Day	138		10	review the documents and we're reserving our rights to	
11	Exhibit 14	Retiree Legacy Cost Restructuring			11	recall Mr. Orr for further deposition if after review	
12		September 11, 2013	153		12	of the documents we feel it's appropriate to do so.	
13	Exhibit 15	Declaration of Mr. Orr	157		13	MR. SHUMAKER: We'd just note for the	
14	Exhibit 16	Detroit News Article, 7/16/2013	200		14	record that we're abiding by the schedule set by the	
15	Exhibit 17	City of Detroit, Michigan's Objections and			15	Court and that the documents that were produced were	
16		Responses to Detroit Retirement Systems'			16	responsive to the more than hundred document requests	
17		First Requests for Admission Directed to			17	that the City received in connection with this motion	
18		the City of Detroit, Michigan	251		18	and so we reserve all rights and I'm sure we'll oppose	
19	Exhibit 18	June 27, 2013 Letter from Jones Day	266		19	any effort to continue the deposition.	
20	Exhibit 19	City of Detroit, Michigan's Objections and			20	MR. ULLMAN: Duly noted.	
21		Responses to Detroit Retirement Systems'			21	Q. Mr. Orr?	
22		First Set of Interrogatories Directed to			22	A. Yes.	
23		the City of Detroit, Michigan	300		23	Q. You've been deposed before; correct?	
24					24	A. Yes.	
25					25	Q. So you know I will ask questions and I would	



<p>Page 9</p> <p>1 appreciate if you wait until I finish before you 2 answer; and likewise, I'll wait until you finish 3 answering before starting the next question. 4 A. Yes. 5 Q. And if there's any question of mine you don't 6 understand, please let me know and I'll rephrase it. 7 A. Okay. 8 Q. You were appointed Emergency Manager on March 14th, 9 2013; is that right? 10 A. No. 11 Q. Okay, technically you were appointed Emergency 12 Financial Manager on March 14th; is that right? 13 A. No. 14 Q. Okay. When were you appointed the Emergency Financial 15 Manager? 16 A. I think the final papers were signed on March 25th or 17 the 26th. The announcement or rollout was on the 13th 18 and 14th. 19 Q. Okay. So it was announced on the 13th or 14th that 20 you were going to be the Emergency Manager? 21 A. Yes, effective March 25th. 22 Q. And then when -- you're familiar with PA 436? 23 A. Yes. 24 Q. So your original appointment was as the Emergency 25 Financial Manager; is that right?</p>	<p>Page 11</p> <p>1 believe that's right. 2 Q. Okay. And among other things it authorized the 3 governor to give authorization to the Emergency 4 Manager to file for bankruptcy under Chapter 9; is 5 that right? 6 A. Yes. 7 Q. And the text authorizes but does not require the 8 governor to place contingencies on the municipalities 9 proceeding under Chapter 9; is that right? 10 A. Statute speaks for itself, but I believe that's 11 correct. 12 Q. And when did you first became aware of those 13 provisions in PA 436? 14 A. Probably mid to late January or February. 15 Q. Now, did you have any involvement in the drafting of 16 PA 436? 17 A. No, none whatsoever. 18 Q. Did Jones Day to your knowledge? 19 A. No, none whatsoever. 20 Q. Now, prior to the enactment of 436 did you have any 21 communications, written or oral, with anyone from the 22 city of Michigan -- I'm sorry, the City of Detroit or 23 the State of Michigan regarding PA 436? 24 A. I believe that's a compound question, but I'll answer 25 it. No.</p>
<p>Page 10</p> <p>1 A. Yes. 2 Q. And then when PA 436 became effective, you became the 3 financial manager? 4 A. No. 5 Q. I'm sorry, the Emergency Manager; is that right? 6 A. Yes. 7 Q. And PA 436 became effective on March 28th; is that 8 right? 9 A. Yes, I believe so. 10 Q. Okay. And PA 436 followed PA 4. Are you familiar 11 with PA 4? 12 A. Yes. 13 Q. And were you aware that PA 4 was struck by 14 referendum -- by voter referendum in Michigan in 15 November 2012? 16 A. Yes. 17 Q. Now, did you have any involvement in Public Act 4 in 18 Michigan? 19 A. No. 20 Q. Was there any involvement by Jones Day to your 21 knowledge? 22 A. Not to my knowledge. 23 Q. Now, PA 436 was enacted in December of 2012; is that 24 right? 25 A. I believe the statute speaks for itself, but I do</p>	<p>Page 12</p> <p>1 Q. Now, at the time that you indicated you were 2 effectively made the -- became known that you would be 3 the Emergency Manager around the 13th or 14th of 4 March, you were a practicing lawyer; is that right? 5 A. Yes. 6 Q. And you were at Jones Day; correct? 7 A. Yes. 8 Q. And you've been engaged in the practice of law for a 9 number of years prior to 2013; correct? 10 A. Yes, since 1983. I was licensed in February 1984. 11 Q. And your expertise was bankruptcy law; is that right? 12 A. Started out as a trial attorney, eventually became a 13 bankruptcy litigator, eventually into all aspects of 14 bankruptcy law. 15 Q. So as of 2013 is it fair to say that you have 16 expertise with bankruptcy law? 17 A. Yes. 18 Q. In fact that's what you're best known for; isn't it? 19 A. At this point I think so. 20 Q. And you worked on the Chrysler bankruptcy in 2009; is 21 that right? 22 A. Yes, 2008 through 2013. 23 Q. Okay. 24 A. Okay. 25 Q. And you also spent a number of years at the office for</p>



<p>Page 13</p> <p>1 the US trustee; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And what was your role there?</p> <p>4 A. I was initially brought in as deputy director of the</p> <p>5 US Trustee's office and upon the retirement of my</p> <p>6 mentor and prior director, Jerry Patchan, I became</p> <p>7 director of that office.</p> <p>8 Q. Okay. And was your role there in a legal capacity in</p> <p>9 terms of working with the department?</p> <p>10 A. No, I was one of -- I was a component head of one of</p> <p>11 the 36 components in the United States Department of</p> <p>12 Justice, which was more in the nature of managerial as</p> <p>13 opposed to legal responsibility.</p> <p>14 Q. Okay. So did you ever serve as an actual trustee in a</p> <p>15 bankruptcy case?</p> <p>16 A. At the US Trustee's office?</p> <p>17 Q. Yes.</p> <p>18 A. No.</p> <p>19 Q. And you also work for the RTC; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And that was in a litigation capacity?</p> <p>22 A. Yes, litigation and supervisory.</p> <p>23 Q. Now, you've never -- prior to becoming the Emergency</p> <p>24 Manager you never ran a city; did you?</p> <p>25 A. No.</p>	<p>Page 15</p> <p>1 Q. Okay. Did you have any involvement or experience in</p> <p>2 actual budgeting for general, state or local</p> <p>3 operations for all the various departments that are</p> <p>4 involved in the running of a state or a city?</p> <p>5 A. I'm trying to be accurate without overstating my prior</p> <p>6 experience.</p> <p>7 Q. Uh-huh.</p> <p>8 A. There were times where I was involved in various</p> <p>9 campaigns, political campaigns, and as I said, land</p> <p>10 use, planning and zoning, which would look at various</p> <p>11 functions, but not for an entire city.</p> <p>12 Q. Okay, not for budgeting the various operations for</p> <p>13 sanitation, for police, for all the functions that go</p> <p>14 into a city or a state?</p> <p>15 A. No, let me be clear. If your question is was I ever</p> <p>16 responsible for budgeting all the operations like in</p> <p>17 Detroit, which has 44 departments, the answer is no.</p> <p>18 Q. Did you ever run a corporation?</p> <p>19 A. I actually think I did.</p> <p>20 Q. What was that?</p> <p>21 A. With the RTC I was appointed as an officer for one of</p> <p>22 the financial institutions.</p> <p>23 Q. Okay, and when was that?</p> <p>24 A. I was at the RTC from '91 through '96 so sometime in</p> <p>25 that period.</p>
<p>Page 14</p> <p>1 Q. Did you -- prior to becoming the Emergency Manager did</p> <p>2 you have any position that had responsibility for the</p> <p>3 operations of a municipality?</p> <p>4 A. I'm just thinking through the various career positions</p> <p>5 I had. Let me correct something. I think your</p> <p>6 question was was I ever receiver or bankruptcy</p> <p>7 receiver? Which one was it?</p> <p>8 Q. I think I asked whether you were ever a trustee.</p> <p>9 While you were at the --</p> <p>10 A. Not as the US Trustee, but I had served in Florida as</p> <p>11 a receiver and a trustee in a matter whose name</p> <p>12 escapes me, it was some years ago. Had I ever done</p> <p>13 anything in the operations of a city inside? No.</p> <p>14 Q. And as of 2013 did you have any experience or</p> <p>15 expertise with local or state budgeting?</p> <p>16 A. Yes.</p> <p>17 Q. What was that?</p> <p>18 A. At various times in my practice in Florida I was also</p> <p>19 a land use attorney and from time to time would be</p> <p>20 involved with various officials regarding planning and</p> <p>21 zoning issues.</p> <p>22 Q. Okay, but -- and the involvement was limited to</p> <p>23 planning and zoning?</p> <p>24 A. No, planning, land use and zoning, not inside the</p> <p>25 government as a private practitioner.</p>	<p>Page 16</p> <p>1 Q. And what position did you hold?</p> <p>2 A. I don't recall.</p> <p>3 Q. And what were your responsibilities; do you remember</p> <p>4 -- first of, all do you remember what corporation it</p> <p>5 was?</p> <p>6 A. I don't. It was one of the many savings and loans</p> <p>7 that we had. I think it was in New Orleans. The head</p> <p>8 of the division sent me down to take it over with a</p> <p>9 team.</p> <p>10 Q. Do you remember the name of the S&L?</p> <p>11 A. I do not.</p> <p>12 Q. How long that lasted?</p> <p>13 A. I think I was commuting off and on for two to four</p> <p>14 years.</p> <p>15 Q. Do you recall how many people worked for you at the</p> <p>16 S&L?</p> <p>17 A. Several hundred.</p> <p>18 Q. And that was obviously focused solely on the business</p> <p>19 of that particular S&L; correct?</p> <p>20 A. Yeah, there were a bunch of other issues, regulatory</p> <p>21 issues, liability issues, insurance, but the business</p> <p>22 of a savings and loan or holding -- could have been</p> <p>23 the holding company for a savings and loan.</p> <p>24 Q. Outside of that have you ever worked in business?</p> <p>25 A. At a managerial level?</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. Yeah.</p> <p>2 A. As I said, I think I was a receiver in another case in</p> <p>3 Florida and perhaps a special master in another matter</p> <p>4 in Florida.</p> <p>5 Q. But just as a regular, working for a company?</p> <p>6 A. No, I've been an attorney all my professional career.</p> <p>7 Q. Do you have any particular expertise in finance?</p> <p>8 A. Other than being a bankruptcy attorney, no, my degrees</p> <p>9 are in political science and law.</p> <p>10 Q. And you indicated that you served as a trustee or</p> <p>11 receiver once in Florida and what was the nature of</p> <p>12 the company that you acted as receiver for?</p> <p>13 A. I don't recall. I would be speculating. It was</p> <p>14 affiliated with real estate in some fashion.</p> <p>15 Q. Okay. And do you have an accounting degree?</p> <p>16 A. No.</p> <p>17 Q. Are you an actuary?</p> <p>18 A. No.</p> <p>19 Q. Is it fair to say that as of the time of your</p> <p>20 appointment as Emergency Manager, your sole expertise</p> <p>21 was in law and particularly in bankruptcy law?</p> <p>22 A. No. I think that while my principal expertise was in</p> <p>23 law and bankruptcy law that in that capacity we</p> <p>24 obviously as bankruptcy professionals deal with</p> <p>25 financial issues and requirements that require us to</p>	<p style="text-align: right;">Page 19</p> <p>1 possibility of your acting as Emergency Manager first</p> <p>2 raised?</p> <p>3 A. I believe it was raised within a few days of us coming</p> <p>4 back from that presentation.</p> <p>5 Q. And how did that come about? What was said?</p> <p>6 A. Someone called my managing partner, as I understand</p> <p>7 it, I wasn't on that call, and asked if I might be</p> <p>8 interested in serving as Emergency Manager and my then</p> <p>9 managing partner relayed that conversation to me.</p> <p>10 Q. And that -- is that the first time that you became</p> <p>11 aware that you were being considered for the Emergency</p> <p>12 Manager position?</p> <p>13 A. Yes, I believe that was in February.</p> <p>14 Q. Now, you had attended the presentation or the pitch</p> <p>15 for Jones Day that you just referred to before the</p> <p>16 restructuring committee of advisors?</p> <p>17 A. Yes, Jones Day was one of I believe 21 law firms that</p> <p>18 made presentations to that group about representing</p> <p>19 the City.</p> <p>20 Q. And what were the qualifications of Jones Day that</p> <p>21 were presented at that presentation?</p> <p>22 A. We had prepared a book of the qualifications of the</p> <p>23 various attorney and the law firm and other</p> <p>24 representations both in court and out of court</p> <p>25 restructuring, having to do with healthcare, employee</p>
<p style="text-align: right;">Page 18</p> <p>1 make judgment calls. I would not say that that</p> <p>2 typically would include the level of expertise as an</p> <p>3 actuary.</p> <p>4 Q. Okay. And your sole -- your involvement in financial</p> <p>5 issues as you indicated was gained in your capacity as a</p> <p>6 bankruptcy lawyer; is that right?</p> <p>7 A. Well, gained in my capacity as I said through the arc</p> <p>8 of my career having to do with first trial attorney,</p> <p>9 business law, banking and finance at the FDIC, then</p> <p>10 the RTC, then the Department of Justice and</p> <p>11 bankruptcy.</p> <p>12 Q. Now, you had discussions with the governor of Michigan</p> <p>13 or people working with or for him prior to becoming</p> <p>14 Emergency Manager; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Can you tell me about those?</p> <p>17 A. Yeah, I believe when you say people either working</p> <p>18 with or for him, the initial discussion was at the end</p> <p>19 of January, could have been early February, but I</p> <p>20 think it was the end of January when we came in to</p> <p>21 pitch for the restructuring work for the City of</p> <p>22 Detroit before a restructuring team of advisors, which</p> <p>23 excluded -- the governor was not involved in that</p> <p>24 presentation.</p> <p>25 Q. And when was it first discussed -- when was the</p>	<p style="text-align: right;">Page 20</p> <p>1 benefits, labor issues, having to do with</p> <p>2 environmental, bankruptcy, litigation, analyses,</p> <p>3 negotiations, mediation, the full panoply of work that</p> <p>4 the firm did.</p> <p>5 Q. And did you make any personal presentation at that</p> <p>6 meeting, did you pitch anything?</p> <p>7 A. We all spoke.</p> <p>8 Q. Okay, and what did you speak about as regards what you</p> <p>9 would bring to the table?</p> <p>10 A. No, there were no presentations made so much with</p> <p>11 regard to what I personally might bring to the table.</p> <p>12 Q. Okay.</p> <p>13 A. Although we did discuss the experience of the team.</p> <p>14 There was no presentation for why any of us, for</p> <p>15 instance, should be Emergency Manager. There was</p> <p>16 discussion about what we perceived to be the difficult</p> <p>17 status of the City and how our law firm could provide</p> <p>18 representation to the City.</p> <p>19 Q. And was anything said to the committee at the meeting</p> <p>20 either through the book or orally as to your</p> <p>21 particular credentials and expertise?</p> <p>22 A. My credentials were included in the book, as were the</p> <p>23 other attorneys at the presentation.</p> <p>24 Q. Okay. And your --</p> <p>25 A. Please.</p>

<p style="text-align: right;">Page 21</p> <p>1 Q. Did I -- were you done? 2 A. No, no, I was done, yeah. 3 Q. Okay. And were your credentials presented that 4 presented you as primarily as a bankruptcy lawyer? 5 A. As primary as a bankruptcy and restructuring attorney, 6 yes. 7 Q. And was there any discussion specifically of the 8 possibility of a Chapter 9 filing at this 9 presentation? 10 A. I don't think so. I don't recall -- I don't -- I 11 don't -- I don't recall, and the reason I say I don't 12 recall is there -- no, wait a minute. I don't know if 13 there was a discussion about the City. There was a 14 discussion about other Chapter 9 cases, other cities. 15 Q. And what specifically do you recall being said about 16 the Chapter 9 filings in the other cases? Let me put 17 it this way. Did Jones Day refer to experience it had 18 in doing other Chapter 9 filings? 19 A. Yes, yes, various members of the team referred to that 20 experience, yes. 21 Q. And is it fair to say that the Chapter 9 experience 22 was a substantial part of the pitch that Jones Day was 23 making to this committee? 24 A. No. 25 MR. SHUMAKER: Object to the form.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I don't recall specific discussions, but there may 2 have been. The discussions were more at a high level 3 as opposed to detailed level. 4 Q. And do you recall at a general level there being 5 discussion that Detroit was facing major issues 6 regarding its pension and other retirement benefit 7 liabilities? 8 A. I know, to be candid with you, the pitch book 9 contained the information regarding employee benefits 10 and labor attorneys. One of the attorneys on the team 11 was a labor attorney, but I don't recall there being 12 specific discussions in detail about those issues. 13 Q. Do you recall in general at the committee discussion 14 being raised that Detroit was in fact facing 15 substantial issues concerning its pension and other 16 retirement benefits and needed to find a way to deal 17 with those? 18 A. Here again I don't recall specific discussions. There 19 may have been. I just don't recall. 20 Q. Okay. Let me show you some documents, Mr. Orr. 21 A. Thank you. 22 Q. You can't thank me until you've seen the documents. 23 A. It may refresh my recollection. I just don't recall. 24 MR. ULLMAN: Let's mark the first one as 25 Orr 1.</p>
<p style="text-align: right;">Page 22</p> <p>1 A. No, it was a component of the presentation. 2 Q. That -- you said there was a written presentation or 3 written material? 4 A. There was a book, yes, there were written materials. 5 Q. And do you know whether that's been produced? 6 A. I do not. 7 MR. ULLMAN: I would like to call for the 8 production of that, please. 9 MR. SHUMAKER: We'll look into it. I would 10 ask here that if you're going to ask for documents 11 throughout the deposition, that you follow-up with a 12 letter and email. 13 MR. ULLMAN: Sure. 14 Q. And do you recall whether there was any discussion at 15 this presentation as to the major problems that were 16 facing Detroit at the time? 17 A. I think there were discussions about Detroit's issues, 18 various issues at the time, yes. 19 Q. And do you recall any discussion about the issues that 20 Detroit was facing regarding its pension liabilities? 21 A. I don't recall specific discussions and -- no, I don't 22 recall specific discussions but there may have been. 23 Q. Okay. And the same question for retirement benefits 24 in general apart from pension benefits. Do you recall 25 any discussion of that?</p>	<p style="text-align: right;">Page 24</p> <p>1 (Marked Exhibit No. 1.) 2 Q. Are there other copies of that? Thanks. 3 A. Okay. 4 Q. Okay, what we're marked as Orr Number 1 is an email, 5 bears the Bates stamp ending in 113. 6 A. Yes. 7 Q. Now, these either -- there are a couple of emails on 8 this chain from January of 30 -- January 30, 2013. 9 A. Yes. 10 Q. And the bottom one states that it's from Richard Baird 11 to Corinne Ball. Who is Richard Baird? 12 A. Richard Baird is the governor's transition manager on 13 contract to the State of Michigan. 14 Q. And he says -- the message is to Corinne, sorry I 15 missed your call. Basically says, I'm inquiring about 16 the potentiality of actually hiring a member of your 17 team for the Detroit EM spot. 18 A. Yes. 19 Q. And is this what you were referring to before in your 20 testimony? 21 A. Yes. Says, was on the phone with Steve Brogan. He 22 can fill you in, but basically thinking about 23 potential -- yes, that's what I was talking about. 24 Q. And it's your testimony that prior to this you had not 25 had discussions with anyone from the State of Michigan</p>

<p style="text-align: right;">Page 25</p> <p>1 or the city of Michigan (sic) about the possibility of 2 becoming Emergency Manager? 3 A. Absolutely not. 4 Q. And at the top it says, bet he asked if Kevyn could be 5 EM, and that in fact is why he was calling? 6 A. Yes, I see that. 7 Q. And then that's what happened? He did call and -- he 8 had called Corinne Ball to ask about you being the EM? 9 MR. SHUMAKER: Object to the form. 10 A. This document -- I don't know. My testimony is that I 11 believe Rich had called my managing partner, who was 12 Steve Brogan. I don't know if he called Corinne Ball. 13 This seems to be an email exchange between him and 14 Corinne Ball and then Heather Lennox and Amy Ferber. 15 Q. Okay, fair enough. But you recall around that day 16 someone telling you that Baird had called talking 17 about the EM position and then shortly thereafter you 18 in fact got a call; is that right? 19 MR. SHUMAKER: Object to the form. 20 A. Yeah. I don't know if it was -- it was soon 21 thereafter. I don't know if it was that specific day, 22 but it was soon thereafter. 23 Q. And you then got -- did you get a call from Mr. Baird 24 directly? 25 A. No.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. You've seen this email chain before, Mr. Orr? 2 A. Yes. 3 Q. And in fact you are on both emails; are you? 4 A. I think I wrote the top one. 5 Q. Okay. Now, what is the role of Jones Day at this 6 time? Does it have an official role with Detroit or 7 with the State of Michigan? 8 A. No, at this time, as far as I recall, Jones Day was a 9 candidate to be the attorneys for the City. 10 Q. Now, starting with the bottom email, this is from 11 Corinne Ball to you. 12 A. Yes. 13 Q. And she goes on to talk about food for thought for 14 your conversation with Baird. Obviously referring to 15 a conversation expected between you and Baird. She 16 makes reference to the Bloomberg Foundation and 17 talking about whether someone should ask Baird about 18 financial support for the project and in particular 19 the EM. Can you tell me what that's referring to? 20 A. This is Corinne's email to me and I think she was 21 talking in some form about the Bloomberg Foundation 22 supporting Detroit efforts with the EM. And I think 23 -- I don't know if in this email or subsequently said 24 something along the lines of I don't want anything to 25 be extraordinary, but I think at that point -- as I</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Who did you get a call from? 2 A. Steve Brogan. 3 Q. Okay, that's your managing partner? 4 A. Yes. 5 Q. And he told you that Baird wanted you to be the EM? 6 A. He told me that they had inquired whether I was 7 interested in applying to become the EM. 8 Q. Okay, and your response was? 9 A. No. 10 Q. Okay. And I take it there were further conversations? 11 A. Yes. That conversation was no. I did not want to 12 leave the firm and that we would tell them that. 13 Q. And did you have a conversation with Richard Baird 14 concerning the possibility of your becoming the EM on 15 or about this time frame at the end of January of 16 2013? 17 A. Yeah, I don't know if it was end of January, here 18 again being in February, but I recall having a 19 conversation with Rich Baird soon thereafter. 20 Q. Okay, let's look at the next document, which we'll 21 mark as Orr 2. 22 (Marked Exhibit No. 2.) 23 Q. What we've marked as Orr 2 is a document ending in 24 Bates number 303. 25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 said, on the 31st, so it wasn't on the 30th, it was 2 the 31st -- that I wasn't interested in the job. 3 Q. Do you know what financial support she's referring to? 4 Did you have a conversation with her about this? 5 A. He we did not have a -- well, we may have had a 6 subsequent conversation about financial support. We 7 -- I don't want to speculate but there may have been a 8 conversation about supplementing the EM salary. 9 Q. An additional salary that would be funded privately? 10 Is that what you're saying? 11 A. Yeah, I think the statute allows the EM to have 12 additional compensation and that may have been what 13 this was referring to or it may have been about the 14 Bloomberg Foundation helping Detroit directly. I'm 15 not sure, but there may have been that discussion. 16 That seems to remind me of something along those 17 lines. 18 Q. The next statement from -- or the last sentence in 19 Ms. Ball's email says, I can ask Harry for contact 20 information. This kind of support in ways 21 nationalizes the issue in the project. 22 Do you have an understanding of what she's 23 referring to? 24 A. I do not. 25 Q. You don't know what she meant when she said -- she</p>



<p style="text-align: right;">Page 29</p> <p>1 used the word nationalized?</p> <p>2 A. No, I don't know if she meant raises the profile of</p> <p>3 the issues to help Detroit, I don't know.</p> <p>4 Q. And you never asked her what she meant?</p> <p>5 A. I don't recall asking her what she meant.</p> <p>6 Q. In the top email in this exhibit you say that you had</p> <p>7 a good conversation with Rich Baird this morning.</p> <p>8 This is the 31st of January?</p> <p>9 A. Yes.</p> <p>10 Q. So obviously either you called him or you called him</p> <p>11 as of the 31st of January?</p> <p>12 A. Yes, yes.</p> <p>13 Q. It says in this email that you told him you were</p> <p>14 interested in the job but there were some things that</p> <p>15 made it impractical. Is that a fair summary of</p> <p>16 your --</p> <p>17 A. Yes.</p> <p>18 Q. -- your conversation with Baird?</p> <p>19 A. Yes.</p> <p>20 Q. And then he suggested you give it additional</p> <p>21 consideration and you said you could say that there's</p> <p>22 a glimmer of hope you would take it?</p> <p>23 A. Right.</p> <p>24 Q. And then you agreed to get back in touch next week?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. I started considering it, yes.</p> <p>2 Q. Now, when he says we're pulling for us to represent</p> <p>3 the City, that's as a restructuring counsel as you</p> <p>4 talked about before?</p> <p>5 A. Yes.</p> <p>6 Q. And there was a program, wasn't there, that had been</p> <p>7 designed to solicit counsel to act as restructuring</p> <p>8 counsel for Detroit?</p> <p>9 A. I don't know if it was a program. I know that there</p> <p>10 was a process that we and 20 other firms participated</p> <p>11 in. I believe it was one day, maybe two, where we</p> <p>12 flew out to the airport and presented our credentials</p> <p>13 over 45 minutes.</p> <p>14 Q. And was there a particular firm that had designed or</p> <p>15 that oversaw that process?</p> <p>16 A. I don't know.</p> <p>17 Q. Were you aware that Buckfire -- are you familiar with</p> <p>18 Buckfire?</p> <p>19 A. I know Miller Buckfire. They were at the</p> <p>20 presentation. I don't know if they designed it.</p> <p>21 Q. Were you aware they were playing a role in the --</p> <p>22 A. Selection process?</p> <p>23 Q. -- in the selection process?</p> <p>24 A. Yes.</p> <p>25 Q. And are you aware that they were in fact effectively</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. He said -- you go on to say that he tells you, he</p> <p>2 Baird, that he likes your presentation, he's pulling</p> <p>3 for us to represent the City.</p> <p>4 A. Yes.</p> <p>5 Q. Is that what he told you?</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember anything else about that conversation</p> <p>8 with Mr. Baird?</p> <p>9 A. No, I remember we had a conversation. I said I was</p> <p>10 flattered, but I really wasn't interested in the job,</p> <p>11 I was very comfortable at Jones Day, didn't want to</p> <p>12 leave my family, I had young children, but I would</p> <p>13 give it some consideration and I think we ended it by</p> <p>14 saying, you know, I probably don't want to take the</p> <p>15 job but I am committed to working and I did say</p> <p>16 working in lockstep with the City and would be willing</p> <p>17 to take any role in this respect.</p> <p>18 Q. And was there any discussion during this conversation</p> <p>19 as to what you would do if you ultimately did take the</p> <p>20 job of EM?</p> <p>21 A. No. As I recall in this conversation based upon this,</p> <p>22 the discussion was very high level and I think</p> <p>23 Mr. Baird asked me to at least give it some reflection</p> <p>24 and consideration and not turn it down outright.</p> <p>25 Q. And you accommodated that request; right?</p>	<p style="text-align: right;">Page 32</p> <p>1 assigning points to the various firms that</p> <p>2 participated and doing some sort of tally to help a</p> <p>3 decision be made?</p> <p>4 A. Yes.</p> <p>5 MR. SHUMAKER: Objection, foundation.</p> <p>6 Q. And is it correct that Miller Buckfire was a banker</p> <p>7 for Chrysler in the Chrysler bankruptcy?</p> <p>8 A. No.</p> <p>9 Q. They weren't?</p> <p>10 A. No. I'm trying to think. Did Miller Buckfire play a</p> <p>11 role in Chrysler? I -- let's put it this way, I had</p> <p>12 not met anyone from Miller Buckfire in the Chrysler</p> <p>13 representation.</p> <p>14 Q. Okay. Let me show you the next document, which we'll</p> <p>15 mark as, what are we up to, 3?</p> <p>16 (Marked Exhibit No. 3.)</p> <p>17 Q. What we've marked as Exhibit 3 is a chain of emails,</p> <p>18 the first page ends in Bates number 300. Have you</p> <p>19 seen these before, Mr. Orr?</p> <p>20 A. Yes.</p> <p>21 Q. Let's first look at the first three emails in this</p> <p>22 chain.</p> <p>23 A. Uh-huh.</p> <p>24 MR. SHUMAKER: The last chronologically or</p> <p>25 the first ones?</p>

<p>Page 33</p> <p>1 MR. ULLMAN: No, the 207.</p> <p>2 A. These are follow-on from the prior email?</p> <p>3 Q. Uh-huh.</p> <p>4 A. Okay.</p> <p>5 Q. If we look at the one that's at the bottom of Bates</p> <p>6 300 that carries over to the next one, this is an</p> <p>7 email from Mr. Moss, from Daniel Moss, to you?</p> <p>8 A. Yes.</p> <p>9 Q. And I take it Mr. Moss is someone you worked with at</p> <p>10 Jones Day; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And were you still at Jones Day at this time?</p> <p>13 A. Yes.</p> <p>14 Q. And Mr. Moss writes that nationalizing this -- making</p> <p>15 this a national issue is not a bad idea. He goes on</p> <p>16 to say it gets political cover for the State</p> <p>17 politicians. He goes on to say that if it succeeds,</p> <p>18 there will be more than enough patronage to allow</p> <p>19 either Bing or Snyder to look for higher callings</p> <p>20 whether a cabinet, senate or corporate. Further this</p> <p>21 would give you cover and options on the back end to</p> <p>22 make up for lost time there.</p> <p>23 Can you tell me what he's referring to?</p> <p>24 MR. SHUMAKER: Objection, form, foundation.</p> <p>25 A. Yeah, I would have to say that the document speaks for</p>	<p>Page 35</p> <p>1 to do what right?</p> <p>2 A. I think this is trying to fix Detroit right in a broad</p> <p>3 sense.</p> <p>4 Q. And is that based on your conversations with Mr. Moss</p> <p>5 or is that based on your reading of this email?</p> <p>6 A. That's based on probably my reading of this email.</p> <p>7 But let me think about conversations. It could have</p> <p>8 meant to do this process right, whatever that is,</p> <p>9 restructuring, out of court or in court.</p> <p>10 Q. So as you sit here now, you don't have a specific</p> <p>11 recollection or understanding as to exactly what</p> <p>12 Mr. Moss meant; is that right?</p> <p>13 A. I have worked closely with Dan Moss for a number of</p> <p>14 years. We have conversations about a number of</p> <p>15 issues, but when you say do this right, I don't want</p> <p>16 to give the wrong impression that there was some</p> <p>17 conversation about what this right exactly meant. I</p> <p>18 assumed it meant to do the process right, whatever</p> <p>19 that is.</p> <p>20 Q. But you don't know what specifically Mr. Moss had in</p> <p>21 mind because you never actually asked?</p> <p>22 A. No. If you're trying to ascribe a specific thing or</p> <p>23 process to it, no.</p> <p>24 Q. In the last sentence Mr. Moss writes, this would give</p> <p>25 you cover and options on the back end to make up for</p>
<p>Page 34</p> <p>1 itself. I think it also says that indeed this gives</p> <p>2 them either greater incentive to do this right. I</p> <p>3 think my response says no.</p> <p>4 Q. Let me ask you questions about this. Mr. Moss says,</p> <p>5 making this a national issue is not a bad idea. Do</p> <p>6 you have an understanding as to what he's referring to</p> <p>7 when he says making this a national issue?</p> <p>8 A. No. What I think he's probably referring to is</p> <p>9 raising the profile of Detroit and the crisis it's in</p> <p>10 so it can get some help.</p> <p>11 Q. Did you have any conversations with Mr. Moss about</p> <p>12 what he meant when he wrote this email?</p> <p>13 A. No, other than this email exchange I don't recall any.</p> <p>14 I think we probably did, though. We talk on a regular</p> <p>15 basis.</p> <p>16 Q. Do you recall anything more specific about what he</p> <p>17 meant when he wrote this is a national issue based on</p> <p>18 the conversations you had with him?</p> <p>19 A. No. There were emails going back and forth and I</p> <p>20 think my email back to him approximately eight minutes</p> <p>21 later addressed the issue.</p> <p>22 Q. Well, he goes on to say that if this gives them -- it</p> <p>23 provides political cover to state politicians and it</p> <p>24 gives them even greater incentive to do this right.</p> <p>25 Do you have an understanding as to what the this is,</p>	<p>Page 36</p> <p>1 lost time there.</p> <p>2 A. Yeah.</p> <p>3 Q. Do you have an understanding as to what he was</p> <p>4 referring to when he wrote that, he Mr. Moss?</p> <p>5 A. No, but I think what my -- my impression is, I think</p> <p>6 what he was trying to say is if you can get -- make</p> <p>7 the issue a national issue and elevate it so that you</p> <p>8 get national support, that you may have greater</p> <p>9 success and be able to get back to my life.</p> <p>10 Q. You mean success as Emergency Manager?</p> <p>11 A. Success for the City of Detroit, yeah.</p> <p>12 Q. Well, he writes this would give you cover and options</p> <p>13 on the back end, you Kevyn Orr --</p> <p>14 A. Yeah, but I think if you read it in conjunction -- I'm</p> <p>15 sorry, I didn't mean to cut you off.</p> <p>16 Q. So my question was is he talking about you, Kevyn Orr,</p> <p>17 in the context of being an Emergency Manager as you</p> <p>18 understood it?</p> <p>19 A. No, I don't want to parse the email and try to ascribe</p> <p>20 meaning to it that's not true. You asked for my</p> <p>21 understanding and my testimony is I think this is Dan</p> <p>22 saying to me if you nationalize the issue, that it</p> <p>23 brings greater attention and perhaps the opportunity</p> <p>24 for people to do this, meaning the project, right and</p> <p>25 if it succeeds, then the other political members will</p>

<p style="text-align: right;">Page 37</p> <p>1 be given acknowledgment for the success. Further, it 2 might give me the ability to come back to the firm and 3 make up for the time that I'd lose if I did this job. 4 Q. The job being the Emergency Manager job? 5 A. Yes. 6 Q. Okay. Now, in the next email that's going up the 7 chain that is on the first page you say you wouldn't 8 do it. 9 A. Yes. 10 Q. And when you say you wouldn't do it, again, do you 11 have -- what is the it that's being referred to? So 12 far no one's ever really identified what nationalizing 13 meant. 14 A. I'm telling you what I can think, what I meant by this 15 writing. 16 Q. Okay. 17 A. What I meant was I wouldn't necessarily make it a 18 national issue and I think I say it would just bring 19 in the Demo/Republican polarization on a national 20 scale and make Detroit a fall for the agendas of both 21 sides, meaning that people would try to use it as an 22 allegory for whatever their particular perception was. 23 I go on to say that the president would have to 24 criticize the trampling of democracy, and that's been 25 done here, not by the president I might add, and the</p>	<p style="text-align: right;">Page 39</p> <p>1 filing? 2 A. Yes. 3 Q. And was this something that you discussed specifically 4 with Mr. Moss? 5 A. We probably did. 6 Q. Okay. And did you discuss the possibility -- so at 7 this point it was understood that one possibility, one 8 potential route of action, would be to file a Chapter 9 9 for Detroit if you took the Emergency Manager job; 10 is that right? 11 A. Yeah, I think that since we have been reviewing 12 background information on Detroit and the possibility 13 of a Chapter 9 filing had been mentioned in 2005, 14 2006, 2009, 2011, 2012, up until this point, in fact I 15 think it was, as I said, I testified earlier this 16 morning, the possibility of Chapter 9s in other cities 17 have been discussed, that the issue of a potential 18 Chapter 9 filing for the City of Detroit was not a 19 particularly surprising discussion. That had been 20 discussed on many levels in the national press, in the 21 local press, it had been recommended by a prior -- in 22 2005 I think it was recommended by a prior employee -- 23 senior employee of the City, so I think that 24 discussion was the typical type of discussion that 25 you'd have with your colleagues.</p>
<p style="text-align: right;">Page 38</p> <p>1 Republicans would rail against any further federal 2 bailouts and that's been said, plus if the feds did 3 anything for Detroit, a number of other municipals 4 would have their hands out at a time when no one's in 5 the mood to dole out federal largess. I think I go on 6 to say this is a morass of problems. 7 So my thought was there, to be clear, that 8 I did not think it, meaning to try to give the issues 9 of Detroit national prominence, was particularly 10 productive. 11 Q. Now, in the top email you write -- or I'm sorry, 12 Mr. Moss writes back to you and in the second 13 paragraph he goes on to say, it seems the ideal 14 scenario would be that Snyder and Bing both agree that 15 the best option is simply to go through an orderly 16 Chapter 9. And then he goes on to say that that 17 avoids a political fight over the scope of any 18 appointed Emergency Manager, moves the ball forward. 19 And then he goes on to say, appointing Emergency 20 Manager whose ability to actually do anything is 21 questionable, would only serve to kick the can down 22 the wrong path. 23 A. Yes. 24 Q. And can you tell me -- obviously this is -- Mr. Moss 25 here is referring to the possibility of a Chapter 9</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And were you in fact at this time having those types 2 of discussions with your colleagues at Jones Day as to 3 the possibilities of a Chapter 9 filing if you took 4 the Emergency Manager job and how that would be 5 implemented? 6 A. Yes, but I don't want to give you the wrong impression 7 because I think based upon what I've seen from some of 8 the briefing and some of the interrogatories the 9 impression is that that was predetermined and that's 10 not true. The reality is there was much discussion 11 about what the alternatives would be and the need to 12 bring something that would bring order and efficiency 13 to the process given the number of interests that were 14 involved. 15 Q. But it was certainly one of the possibilities that was 16 on the table as a course that might need to be 17 followed; is that right? 18 A. Oh, sure, it had been discussed for the better part of 19 the prior decade. 20 Q. And in fact, Mr. Moss is recommending the simplest 21 thing, the best option would be to have the -- Snyder 22 and Bing, the mayor and the governor, both agree to go 23 through an orderly Chapter 9? 24 MR. SHUMAKER: Object to form, calls for 25 speculation.</p>

<p style="text-align: right;">Page 41</p> <p>1 Q. That's what it says here; doesn't it?</p> <p>2 A. Well, I mean, the document speaks for itself.</p> <p>3 Q. My question is did you agree with that?</p> <p>4 A. No. In fact, I think we had discussions back and</p> <p>5 forth about, one, me not wanting to take the job and</p> <p>6 two, whether or not the parties could reach concession</p> <p>7 short of a Chapter 9, which would provide benefit to</p> <p>8 the City in an orderly way.</p> <p>9 Q. And ultimately that didn't happen; did it? The City</p> <p>10 did file Chapter 9; didn't they?</p> <p>11 A. Well, I mean, I think that we took a lot of time, I</p> <p>12 took 30 days when I came into the City, I said --</p> <p>13 Q. Mr. Orr, I don't mean to interrupt you, but I don't</p> <p>14 want to waste time. My question was pretty simple. I</p> <p>15 was simply asking ultimately the City did file a</p> <p>16 Chapter 9; didn't it?</p> <p>17 A. Yes, and I was giving you an explanation for why that</p> <p>18 occurred.</p> <p>19 Q. I'll get to that later.</p> <p>20 A. Okay.</p> <p>21 Q. Now, in this email Mr. Moss goes on to say, appointing</p> <p>22 of Emergency Manager whose ability to do anything</p> <p>23 questionable would only serve to kick the can down the</p> <p>24 wrong path. And he's referring there to the can of</p> <p>25 the Chapter 9 filing; isn't he?</p>	<p style="text-align: right;">Page 43</p> <p>1 advice and recommendation. To the best of my</p> <p>2 knowledge we hadn't been retained then and we were</p> <p>3 just going back and forth about potential options.</p> <p>4 Q. Okay.</p> <p>5 A. So I don't want to give -- my testimony to give this</p> <p>6 email more import and lead to the conclusion as some</p> <p>7 have already said in this litigation, that there was a</p> <p>8 predetermination to file Chapter 9.</p> <p>9 Q. But ultimately it was the Emergency Manager, the</p> <p>10 appointed Emergency Manager, who filed the Chapter 9,</p> <p>11 not Bing and Snyder; is that right?</p> <p>12 A. Yes, after he had been sued multiple times and didn't</p> <p>13 get a comprehensive proposal from any interested party</p> <p>14 or creditor.</p> <p>15 Q. Let me show you another document, which we'll mark as</p> <p>16 Exhibit 4.</p> <p>17 (Marked Exhibit No. 4.)</p> <p>18 Q. This is a chain of emails, it starts with Bates number</p> <p>19 295.</p> <p>20 A. Yes.</p> <p>21 Q. Have you seen this before, Mr. Orr?</p> <p>22 A. Yes.</p> <p>23 Q. In fact, you wrote some of this; didn't you?</p> <p>24 A. Yes.</p> <p>25 Q. If we focus on the top email --</p>
<p style="text-align: right;">Page 42</p> <p>1 MR. SHUMAKER: Objection, form. Calls for</p> <p>2 speculation.</p> <p>3 A. No, no.</p> <p>4 Q. Now, in this email Mr. Moss recommends or suggests the</p> <p>5 best path would be for Snyder and Bing to voluntarily</p> <p>6 go through a Chapter 9 and not go through the</p> <p>7 Emergency Manager process; is that right?</p> <p>8 A. No, you've asked that question before but you put a</p> <p>9 little color on it this time and I don't think that's</p> <p>10 accurate.</p> <p>11 Q. Well --</p> <p>12 A. Perhaps you can rephrase it.</p> <p>13 Q. Certainly. He says, he Moss says, it seems the ideal</p> <p>14 scenario would be that Snyder and Bing both agree that</p> <p>15 the best option is to simply go through an orderly</p> <p>16 Chapter 9. This avoids an unnecessary political fight</p> <p>17 over the scope of authority of any appointed Emergency</p> <p>18 Manager. I'm not going to read the rest.</p> <p>19 You see his recommendation, his advice, his</p> <p>20 belief that the best option is for Bing and Snyder to</p> <p>21 file Chapter 9?</p> <p>22 MR. SHUMAKER: Objection to form.</p> <p>23 A. I think you're coloring the email. As I said before,</p> <p>24 this is pretty typical banter between co-workers and</p> <p>25 colleagues about what could happen. You said it was</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. -- you're talking again -- at this point in time had</p> <p>3 you decided whether to accept the Emergency Manager</p> <p>4 job? This is later in the afternoon on January 31.</p> <p>5 A. No, I didn't. I -- no, there was no time in the</p> <p>6 initial two days that this came up that I decided to</p> <p>7 accept the Emergency Manager job.</p> <p>8 Q. Okay. And in this email you're giving some thoughts</p> <p>9 on some of the issues that pertain to that; aren't</p> <p>10 you?</p> <p>11 A. Yes.</p> <p>12 Q. And in particular you start talking about the</p> <p>13 legislation that pertains to the EM position. You</p> <p>14 said you went back and reviewed various laws; do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. And you talked about some laws in DC control board and</p> <p>18 then you go on in the last sentence -- or I'm sorry,</p> <p>19 the second to the last sentence to write, and I quote,</p> <p>20 "By contrast Michigan's new EM law is a clear</p> <p>21 end-around the prior initiative that was rejected by</p> <p>22 the voters in November."</p> <p>23 You wrote that?</p> <p>24 A. Yes.</p> <p>25 Q. And by the new EM law, you were referring to PA 436?</p>

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<p>Page 49</p> <p>1 A. Yes, I said that.</p> <p>2 Q. And were you writing truthfully when you said that?</p> <p>3 A. Yeah, and I think the balance of the paragraph, the</p> <p>4 news reports state that opponents of the prior law are</p> <p>5 already lining up to challenge this law. So as I just</p> <p>6 testified, this was my preliminary analysis based upon</p> <p>7 a number of sources, some of them were the news</p> <p>8 reports.</p> <p>9 Q. And you were aware in fact that as you just indicated</p> <p>10 that there were either challenges already made or that</p> <p>11 were going to be made to the law?</p> <p>12 A. I was not aware that there were challenges already</p> <p>13 made. I was aware the news report states that</p> <p>14 opponents of the prior law were already lining up to</p> <p>15 challenge the law.</p> <p>16 Q. And did you have any understanding at this time as to</p> <p>17 what those grounds of challenge were or may be?</p> <p>18 A. No. As I said, this was, you know, within the span of</p> <p>19 a day when this was going back and forth about what it</p> <p>20 may require, I was beginning to familiarize myself to</p> <p>21 some degree with the statute.</p> <p>22 Q. Your email goes on to say you're going to speak with</p> <p>23 Baird in a few minutes and see what his thinking is.</p> <p>24 A. Yes.</p> <p>25 Q. Did you speak with Mr. Baird that day?</p>	<p>Page 51</p> <p>1 potential ground for challenge, was that it allowed</p> <p>2 the governor to authorize a bankruptcy filing without</p> <p>3 imposing a condition that would prevent pension</p> <p>4 obligations from being impaired?</p> <p>5 A. I don't know if I was aware of that issue at this</p> <p>6 time, no.</p> <p>7 Q. Well, were you aware -- you became aware of it if not</p> <p>8 then at some point shortly thereafter; correct?</p> <p>9 A. Yeah, let me say this. There was no broad based</p> <p>10 concern at this point about with what the authority</p> <p>11 was with regards to pensions so any sort of</p> <p>12 insinuation that that was the focus at this point is</p> <p>13 just inaccurate. That wasn't true. This as I said</p> <p>14 before was a very cursory and initial sort of review</p> <p>15 of what I was being asked to do so when I had a</p> <p>16 discussion with Mr. Baird later I would have some</p> <p>17 information and that's what I gleaned based upon a few</p> <p>18 hours since apparently I got the call -- I was</p> <p>19 informed that day, that morning or the day before to</p> <p>20 the time I was going to have a call that afternoon.</p> <p>21 Q. But I take it at some point in time you became aware</p> <p>22 that Article 9, Section 24 of the Michigan</p> <p>23 Constitution protects pension benefits from being</p> <p>24 diminished or impaired?</p> <p>25 A. I believe at some point in time I became aware that</p>
<p>Page 50</p> <p>1 A. I don't recall, but I probably did.</p> <p>2 Q. And do you recall any discussions with Mr. Baird that</p> <p>3 day on the subject of the possibility of a Chapter 9</p> <p>4 filing by the City?</p> <p>5 A. No. I don't recall any discussions with Rich Baird</p> <p>6 about the possibility of a Chapter 9 filing at this</p> <p>7 point, no.</p> <p>8 Q. Okay. But clearly at this point in time one of the</p> <p>9 things you were focused on was the possibility of a</p> <p>10 Chapter 9 filing and the legal issues that might</p> <p>11 pertain to that as reflected in this email; correct?</p> <p>12 A. As I have said before, the issue of a Chapter 9 filing</p> <p>13 had been discussed many, many times with regard to</p> <p>14 Detroit for the better part of the prior decade, so in</p> <p>15 doing my sort of due diligence of what the statute</p> <p>16 required, part of what I was doing was reading some of</p> <p>17 those very articles that I mentioned earlier today</p> <p>18 where some of the prior City employees were</p> <p>19 recommending that there was a filing in 2005 in</p> <p>20 connection with the cops, 2006 with the cops, 2009</p> <p>21 with the SWAPs, so yes, Chapter 9 had been discussed</p> <p>22 many, many times in the papers I was reading.</p> <p>23 Q. And from all the discussions that you had to date with</p> <p>24 various people including those at Jones Day, were you</p> <p>25 aware that one of the issues with PA 436, one</p>	<p>Page 52</p> <p>1 Article 9, Section 24 purports to protect pensions and</p> <p>2 benefits in certain circumstances, yes.</p> <p>3 MR. ULLMAN: Let's mark Exhibit 5.</p> <p>4 (Marked Exhibit No. 5.)</p> <p>5 Q. Exhibit 5 is just a printout of Article 9, Section 24</p> <p>6 of the Michigan Constitution. Do you recognize it as</p> <p>7 such?</p> <p>8 A. I mean, the document speaks for itself, but that</p> <p>9 appears to be what it is, yes.</p> <p>10 Q. Okay, and I think your last answer you said that in</p> <p>11 your view Section 24, Article 9 purports to protect</p> <p>12 pensions and benefits in certain circumstances.</p> <p>13 A. Yes.</p> <p>14 Q. And are you contending that the words of Article 9,</p> <p>15 Section 24 means something other than what they say?</p> <p>16 MR. SHUMAKER: Objection, calls for legal</p> <p>17 conclusion.</p> <p>18 A. Yeah, I -- here again, I think the document speaks for</p> <p>19 itself. I think that my response to that issue is</p> <p>20 throughout the arc of my career, whether in federal</p> <p>21 government or in private practice at the Chrysler</p> <p>22 case, there have been many state laws, some of them</p> <p>23 quite sacrosanct, that have been abrogated by federal</p> <p>24 law, not just bankruptcy law. At the RTC we preempted</p> <p>25 state, New York state, rent control litigation, law;</p>

<p>Page 53</p> <p>1 we preempted California state escheat law; we</p> <p>2 preempted -- and that was the model for 50s. In</p> <p>3 Chrysler, we preempted 50 states have dealer franchise</p> <p>4 laws that were preempted. So when I said I recognize</p> <p>5 this, there are federal laws that preempt state laws.</p> <p>6 MR. ULLMAN: I'm going to move to strike as</p> <p>7 nonresponsive.</p> <p>8 Q. Mr. Orr, I appreciate your perhaps trying to be</p> <p>9 helpful, but my question was really very limited and I</p> <p>10 would appreciate it if you could just answer it.</p> <p>11 MR. ULLMAN: Could I have my question read</p> <p>12 back, please?</p> <p>13 (Record read back as requested.)</p> <p>14 A. I think that calls for a legal conclusion and I</p> <p>15 contend that they speak for themselves.</p> <p>16 Q. Now, you made mention in your -- I think when you were</p> <p>17 giving your prior response, you made some allusion to</p> <p>18 federal law.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Is there any question in your mind that apart from</p> <p>21 anything that may come into play under federal law,</p> <p>22 that the constitution of Michigan, Article 9, Section</p> <p>23 24, prohibits pension rights from being diminished or</p> <p>24 impaired?</p> <p>25 MR. SHUMAKER: Objection, calls for legal</p>	<p>Page 55</p> <p>1 Q. Is there any question in your mind that Article 9,</p> <p>2 Section 24 of the Michigan Constitution protects</p> <p>3 pension rights from being diminished or impaired if</p> <p>4 the beneficiaries of those rights do not agree</p> <p>5 consensually to such diminishment or impairment?</p> <p>6 MR. SHUMAKER: Objection, calls for legal</p> <p>7 conclusion.</p> <p>8 A. I think I've answered that before. I think there's</p> <p>9 certain federal laws that allow for preemption --</p> <p>10 Q. I'm asking about independent of any federal law. The</p> <p>11 Michigan Constitution on its own, apart from any</p> <p>12 overlay that you say may apply from federal law, is</p> <p>13 there any question that the Michigan Constitution,</p> <p>14 assuming that the beneficiaries of the retirement</p> <p>15 obligations don't consent, any question that in that</p> <p>16 circumstance the Michigan Constitution prohibits</p> <p>17 pension rights from being diminished or impaired?</p> <p>18 MR. SHUMAKER: Objection, calls for legal</p> <p>19 conclusion.</p> <p>20 A. Here again, Mr. Ullman, you're asking me -- I'm a fact</p> <p>21 30(b)(6) witness, you're asking me for a legal</p> <p>22 conclusion about what the statute says. I'll say that</p> <p>23 the statute speaks for itself and I certainly have</p> <p>24 heard that people take that position.</p> <p>25 Q. Okay, and I'm asking you -- I'm not asking you to give</p>
<p>Page 54</p> <p>1 conclusion.</p> <p>2 A. The document, as I said, speaks for itself. Certainly</p> <p>3 I think I've said before that parties can negotiate a</p> <p>4 resolution of contracts.</p> <p>5 Q. That's -- that's not my question.</p> <p>6 MR. ULLMAN: Could you -- can you read my</p> <p>7 question back? If there's anything about it you don't</p> <p>8 understand, I would be glad to rephrase.</p> <p>9 THE WITNESS: Uh-huh.</p> <p>10 (Record read back as requested.)</p> <p>11 MR. SHUMAKER: Objection to form, calls for</p> <p>12 legal conclusion. You can answer.</p> <p>13 A. Yeah, I think it does call for legal conclusion, but</p> <p>14 as I said, contractual obligations can be negotiated</p> <p>15 at any time.</p> <p>16 Q. Let me rephrase it.</p> <p>17 You understand what the constitution is</p> <p>18 talking about is diminishing or impairing is</p> <p>19 nonconsensual; correct?</p> <p>20 MR. SHUMAKER: Objection, calls for legal</p> <p>21 conclusion.</p> <p>22 Q. Let me rephrase it so there can't be any ambiguity.</p> <p>23 Clearly parties can if they so choose change their</p> <p>24 contract; rights?</p> <p>25 A. Yes.</p>	<p>Page 56</p> <p>1 a legal view. You took the position as an Emergency</p> <p>2 Manager, which is a nonlegal position; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And I'm asking whether in your position as Emergency</p> <p>5 Manager you came to an understanding as to what the</p> <p>6 Michigan Constitution provides in the course of</p> <p>7 carrying out your duties as a Michigan -- or City of</p> <p>8 Detroit Emergency Manager.</p> <p>9 A. Let me put it to you this way. I certainly have heard</p> <p>10 that parties maintain that you cannot diminish based</p> <p>11 upon this constitutional provision. For a whole host</p> <p>12 of reasons whether that's accurate or not there are</p> <p>13 legal arguments being made. I understand you want me</p> <p>14 to say that I understand what this statute says or</p> <p>15 what the constitution says and I say the language</p> <p>16 speaks for itself. I understand what it says in plain</p> <p>17 language.</p> <p>18 Q. So you really just won't answer the question; will</p> <p>19 you?</p> <p>20 MR. SHUMAKER: Objection to form.</p> <p>21 A. No, I've answered your question the best I can.</p> <p>22 Q. So is it your contention that apart from getting</p> <p>23 advice from others, from counsel, as to what it means,</p> <p>24 it the Michigan Constitution, you yourself have no</p> <p>25 independent view as to what the import of the Michigan</p>


<p>Page 57</p> <p>1 Constitution is as regards pension rights?</p> <p>2 A. I think the Michigan Constitution speaks for itself</p> <p>3 and as I've said many times, I have a view in other</p> <p>4 matters I've been involved with where state laws have</p> <p>5 been preempted and I have a view that people can</p> <p>6 negotiate contractual obligations. If you're asking</p> <p>7 for a legal conclusion as to what the constitution, I</p> <p>8 don't think that's appropriate for me to make. I do</p> <p>9 understand what the statute says, though.</p> <p>10 Q. Fair enough.</p> <p>11 Let's go onto the next email, which is --</p> <p>12 will be marked as Exhibit 6.</p> <p>13 (Marked Exhibit No. 6.)</p> <p>14 Q. This is an email, you were involved in it.</p> <p>15 A. Uh-huh.</p> <p>16 Q. It ends -- the first page ends in Bates number 216.</p> <p>17 These are emails between Richard Baird and you; do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. Now, is it correct that as of this time it had been at</p> <p>21 least informally decided that you would take the EM</p> <p>22 position?</p> <p>23 A. I don't know if that's correct as of February 20th.</p> <p>24 What I do know -- let me -- well, let me read the</p> <p>25 email.</p>	<p>Page 59</p> <p>1 A. Yes.</p> <p>2 Q. And so in saying that we can't make this determination</p> <p>3 without Kevyn Orr's review and determination, does</p> <p>4 that not indicate that by this time that you had at</p> <p>5 least told them you would take the position of EM?</p> <p>6 A. No.</p> <p>7 Q. So if that's the case, why, as you understand it,</p> <p>8 would Mr. Baird be telling the mayor that there are</p> <p>9 things he couldn't agree with without getting your</p> <p>10 sign-off on?</p> <p>11 A. As I recall at this time, we were still discussing</p> <p>12 whether or not I would take the job. I don't recall</p> <p>13 how it came up, but there was some discussion about</p> <p>14 what the EM's, quote unquote, partnership would be</p> <p>15 like with the mayor. I also recall at this time I was</p> <p>16 told that there were other candidates that were being</p> <p>17 reviewed, but that they wanted to, meaning Rich,</p> <p>18 wanted to continue to have discussions going forward</p> <p>19 and this is one of the issues that came up in those</p> <p>20 discussions.</p> <p>21 Q. You agree that he, Baird, is writing this email that</p> <p>22 he couldn't agree to changing the mayor executive team</p> <p>23 without your, Kevyn Orr's, review and determination;</p> <p>24 correct?</p> <p>25 MR. SHUMAKER: Objection, form.</p>
<p>Page 58</p> <p>1 I don't know if I had actually informally</p> <p>2 agreed to take the job at that time. What I do know</p> <p>3 is that there were discussions about me taking the job</p> <p>4 and that I believe the mayor had said that he wanted</p> <p>5 to meet me and have a discussion about what the</p> <p>6 relationship between the Emergency Manager and the</p> <p>7 mayor would be.</p> <p>8 Q. Let me look -- and direct your attention to the bottom</p> <p>9 email, second sentence. This is from Baird to you.</p> <p>10 A. Yeah.</p> <p>11 Q. It's talking about a conversation Baird had with the</p> <p>12 mayor. He says, he Baird, writes, told him, the</p> <p>13 mayor, that there were certain things I would not</p> <p>14 think we could agree to without your review.</p> <p>15 He's writing to you?</p> <p>16 A. Yes.</p> <p>17 Q. So this is Kevyn Orr's review?</p> <p>18 A. Yes.</p> <p>19 Q. Assessment and determination (such as keeping the</p> <p>20 executive team in its entirety).</p> <p>21 A. Yes.</p> <p>22 Q. Aren't those -- the ability to have the mayor's</p> <p>23 executive team kept on in its entirety, isn't that</p> <p>24 something that's within the authority of the Emergency</p> <p>25 Manager?</p>	<p>Page 60</p> <p>1 A. I think the document speaks for itself. That's what</p> <p>2 it says, but in February, as I said, it was still</p> <p>3 preliminary and in fact I think the discussion that we</p> <p>4 were having at that time was that even the mayor</p> <p>5 wanted to meet me, I have certainly interested in</p> <p>6 meeting him, prior to me deciding to take the job.</p> <p>7 Q. And this email does not say that Baird can't make --</p> <p>8 may reach an agreement without the assessment, review</p> <p>9 and determination of whoever it is that ends up taking</p> <p>10 the EM position; does he?</p> <p>11 A. No, the document speaks for itself, but I have no way</p> <p>12 of knowing if similar emails were sent to other</p> <p>13 candidates. I don't know.</p> <p>14 Q. Now, at the end of this email Mr. Baird writes, we'll</p> <p>15 broker a meeting via note between you and the mayor's</p> <p>16 personal assistant that is not FOIAble.</p> <p>17 Do you have an understanding of what that</p> <p>18 means to be nonFOIAble?</p> <p>19 A. I think that means that whatever discussions they have</p> <p>20 aren't subject to the Freedom of Information Act</p> <p>21 either state or federal.</p> <p>22 Q. And you have an understanding as to why Mr. Baird</p> <p>23 wanted meetings between you and the mayor's personal</p> <p>24 assistant to be not subject to FOIA?</p> <p>25 A. I don't -- I don't read this email as saying a meeting</p>

<p style="text-align: right;">Page 61</p> <p>1 meeting between me and the mayor's personal assistant.</p> <p>2 Q. He says, we'll broker a meeting via note between you</p> <p>3 and the mayor's personal assistant who is not FOIAble?</p> <p>4 A. Yeah, as I read this email -- I never met with the</p> <p>5 mayor's personal assistant so let's get that out of</p> <p>6 the way. As I read this email, we were talking about</p> <p>7 a meeting between me and the mayor.</p> <p>8 Q. Right, and isn't he -- fair enough. And isn't Baird</p> <p>9 saying that he wants to set up a meeting via going</p> <p>10 through the mayor's personal assistant who is not</p> <p>11 FOIAble?</p> <p>12 A. I think that's a fair reading.</p> <p>13 Q. And do you know why he wanted to go through the route</p> <p>14 of setting up this meeting through someone who is not</p> <p>15 FOIAble?</p> <p>16 A. No.</p> <p>17 Q. Did you subsequently have a meeting with the mayor?</p> <p>18 A. Yes.</p> <p>19 Q. And what was said at that meeting?</p> <p>20 A. I think the first meeting was -- my impression of the</p> <p>21 first meeting was just a meet and greet. I think the</p> <p>22 mayor wanted to get an assessment of who I was as</p> <p>23 potentially coming into the City as a potential</p> <p>24 Emergency Manager and to sort of get to know me, start</p> <p>25 to get to know me.</p>	<p style="text-align: right;">Page 63</p> <p>1 issues that the City faced as a result of the pension</p> <p>2 obligations?</p> <p>3 A. No. Frankly, our first meeting was more me telling</p> <p>4 him how happy I was to meet him, I was a basketball</p> <p>5 fan, particular fan of his for many years, getting his</p> <p>6 understanding of the City --</p> <p>7 Q. I'm sorry, Mr. Orr, I don't mean to interrupt you, but</p> <p>8 that really wasn't responsive. My question was really</p> <p>9 a yes or no question. I didn't ask tell me everything</p> <p>10 you said. I asked a specific question.</p> <p>11 MR. ULLMAN: Why don't you read it back?</p> <p>12 THE WITNESS: What was your question again?</p> <p>13 (Record read back as requested.)</p> <p>14 A. No, I don't recall that discussion.</p> <p>15 Q. And the same question for both meetings, so I'm not</p> <p>16 sure if that question was limited to the first</p> <p>17 meeting.</p> <p>18 A. I don't recall having those discussions in either</p> <p>19 meeting.</p> <p>20 Q. Do you recall any discussion in either meeting with</p> <p>21 the mayor about the issues the City was facing with</p> <p>22 its obligations for healthcare benefits for retirees?</p> <p>23 A. No, I don't recall either meeting having those</p> <p>24 discussions.</p> <p>25 Q. Show you the next document, which we'll mark as</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. How many meetings were there with the mayor before you</p> <p>2 became the EM?</p> <p>3 A. At least two.</p> <p>4 Q. Do you recall when they took place?</p> <p>5 A. I do not.</p> <p>6 Q. Okay.</p> <p>7 A. Somewhere around this time frame.</p> <p>8 Q. And was the subject of Chapter 11 filing discussed at</p> <p>9 either of those meetings?</p> <p>10 A. No.</p> <p>11 Q. Was the subject of a potential Chapter 11 filing</p> <p>12 discussed at either of those meetings? I'm sorry.</p> <p>13 Let me rephrase my question.</p> <p>14 A. I can answer your question. No, neither Chapter 9 nor</p> <p>15 Chapter 11.</p> <p>16 Q. So you didn't discuss even the potentiality of a</p> <p>17 Chapter 9 filing at either of those meetings with the</p> <p>18 mayor; is that your testimony?</p> <p>19 A. Yes. I don't recall -- let me. We may have -- I was</p> <p>20 a bankruptcy attorney, we may have discussed it, but I</p> <p>21 don't recall discussing specific issues regarding</p> <p>22 Chapter 9 or to the extent people are suggesting that</p> <p>23 that was predetermined. I don't recall those kinds of</p> <p>24 discussions.</p> <p>25 Q. Do you recall any discussion with the mayor as to the</p>	<p style="text-align: right;">Page 64</p> <p>1 Exhibit 7.</p> <p>2 (Marked Exhibit No. 7.)</p> <p>3 Q. And I would like you to in particular if you would to</p> <p>4 focus on the email at the top of -- let me identify</p> <p>5 this first. This is an email chain beginning at Bates</p> <p>6 page 459 and what I would like you to do, Mr. Orr, is</p> <p>7 focus on Bates page 461, the email at the top of that</p> <p>8 page.</p> <p>9 A. 461?</p> <p>10 Q. Please.</p> <p>11 A. Yes.</p> <p>12 Q. You see at the top there's an email from you to</p> <p>13 Mr. Baird?</p> <p>14 A. Yes.</p> <p>15 Q. Eight o'clock, 8:17 at night?</p> <p>16 A. Yes.</p> <p>17 Q. And you talk among other things about what would be</p> <p>18 expected on day one. Do you see that at the bottom?</p> <p>19 A. Yes.</p> <p>20 Q. So is it fair to say that by this time you had already</p> <p>21 known that you were going to take the EM job?</p> <p>22 A. No.</p> <p>23 Q. So why were you then asking about what you can expect</p> <p>24 on day one?</p> <p>25 A. Because at this point I was still considering whether</p>

<p>Page 65</p> <p>1 or not I would take the job, but I was doing my due 2 diligence. As you can see from the email, there was 3 this proposed partnership agreement that the mayor 4 submitted. I say that my intent is not to undermine 5 the mayor's role or the good faith with which I 6 suspect all parties will move forward, but I wanted to 7 include qualifications not just from my role as EM but 8 also for the future. So there was still no 9 determination that I would take the job, but I was 10 moving forward on trying to get an idea of what was 11 expected of me if I were to take the job and also, for 12 instance, when I look at the documents, representative 13 samples of the CBAs and the SWAP and related 14 agreements.</p> <p>15 Q. You write in the last paragraph that you've been 16 pouring over the law and the board's findings to 17 assure that you have some idea about what's 18 permissible and expected on day one; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And by permissible and pouring over the law you meant 21 you wanted to understand and be aware of what was 22 permissible under the law; is that right?</p> <p>23 A. Yes. As I said earlier today, my initial look was 24 very high level and cursory and then as this 25 discussion evolved, I started digging down more into</p>	<p>Page 67</p> <p>1 what they included by asking for the CBAs and the 2 background documentation so I don't want to give you 3 the wrong impression that item number 7 has the level 4 of specificity that you seem to be suggesting. I was 5 still getting an idea of what they were.</p> <p>6 Q. I'm -- I wasn't suggesting anything. I was asking 7 whether the retiree and benefit initiatives that are 8 referred to in item 7 included initiatives related to 9 the pension and retirement healthcare costs?</p> <p>10 MR. SHUMAKER: Objection, form.</p> <p>11 A. They might, but to be honest with you, at this time 12 there wasn't that level of specificity. They 13 certainly -- the document speaks for itself. Seven 14 says labor retiree and benefits initiative, but to the 15 extent your question is trying to suggest that there 16 were detailed levels, no, I was still doing my due 17 diligence.</p> <p>18 Q. There was some general understanding that there were 19 issues pertaining to pension and healthcare benefits; 20 is that right?</p> <p>21 A. I -- yes, I think there had been issues concerning 22 pension and healthcare benefits for years as I poured 23 over the consent decree and the various reports made 24 by the State from 2010 forward, yes.</p> <p>25 Q. You were aware that the pension costs and healthcare</p>
<p>Page 66</p> <p>1 the law.</p> <p>2 Q. And on the attachment that we have here, which begins 3 at Bates page 463, the attachment to this email chain; 4 do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And this is a list of various items that are under 7 discussion; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And you see item 7?</p> <p>10 A. Yes.</p> <p>11 Q. It says labor, retiree and benefit initiatives will be 12 pursued jointly by the mayor and the manager to the 13 extent permitted by law?</p> <p>14 A. Yes.</p> <p>15 Q. And that was part of the current thinking at the time, 16 was it, that that's one of the things the EM was going 17 to do?</p> <p>18 A. Yes, I think it was envisioned in the statute and this 19 I believe came off of the mayor's initial proposal, 20 but yes.</p> <p>21 Q. And the retirees and benefit initiatives, those 22 included initiatives to deal with pension and 23 healthcare costs; is that right?</p> <p>24 A. To be honest with you, as you can see from my email on 25 page 461, I was still trying to get an idea of exactly</p>	<p>Page 68</p> <p>1 costs were among the more pressing issues that the 2 City of Detroit was facing at the time?</p> <p>3 A. I'm not sure I was aware that they were among the more 4 pressing issues at that time. I certainly knew that 5 they were significant. Frankly, at that time I was 6 looking at debt.</p> <p>7 Q. And at this point in time did you do any analysis as 8 to what was permissible under law regarding retiree 9 benefits?</p> <p>10 A. No, I think my prior email at Bates stamp 461 says I 11 needed to get more documentation to get an 12 understanding.</p> <p>13 Q. And your email here at the top of page 461 says, I've 14 been pouring over the law --</p> <p>15 A. Yes.</p> <p>16 Q. -- to find out about what is permissible. And my 17 question was did that involve any consideration of 18 what was permissible under the law as regards pension 19 and healthcare benefits?</p> <p>20 A. It might have, but the permissible that I was 21 referring to was permissible writ large as far as what 22 were the Emergency Manager's duties, which necessarily 23 could have included, but I don't want to give you the 24 wrong impression that that was the fundamental focus 25 or the primary focus of what I was saying here. It</p>


<p style="text-align: right;">Page 69</p> <p>1 wasn't. It was the Emergency Manager's duties writ 2 large. 3 Q. And when you say you were pouring over the law, you 4 yourself were doing legal analysis, reading various 5 laws; is that right? 6 A. Yes, I was trying to get background information, yes. 7 Q. And as part of that background information did you 8 read Article 9, Section 24 of the Michigan 9 Constitution? 10 A. I may have. 11 Q. Is there any question in your mind that you didn't? 12 A. I -- if you have a document to refresh my 13 recollection, I'm happy to look at it. Sitting here 14 on this day on February 20th, I don't recall whether 15 or not I read that article of the constitution. 16 Q. There's no question that at some point after February 17 20th you read Article 9, Section 24 of the Michigan 18 Constitution; correct? 19 A. My testimony is it may have been before or after the 20 20th. I don't recall whether I did that sitting here 21 today. 22 Q. Okay, but it was either one or the other, but you 23 certainly have read it? 24 A. Yes, I've read it. I read it today. 25 Q. And you read it before you became Emergency Manager;</p>	<p style="text-align: right;">Page 71</p> <p>1 fact going to be the Emergency Manager for the City of 2 Detroit? 3 MR. SHUMAKER: Objection, calls for 4 speculation. 5 A. No. 6 Q. And you agree the document speaks for itself; don't 7 you? 8 A. I just said that. 9 MR. ULLMAN: Maybe this would be a good 10 time for a break. 11 THE VIDEOGRAPHER: Going off the record at 12 11:28 a.m. 13 (A brief recess was taken.) 14 THE VIDEOGRAPHER: We're back on the record 15 at 11:42 a.m. 16 BY MR. ULLMAN: 17 Q. Mr. Orr, is it correct that prior to the official 18 announcement that you said was in March -- on March 19 13th or 14th you had had conversations with the State 20 where you said that you would take the OM job -- I'm 21 sorry, the EM job? 22 A. I think at that time in all fairness it was EFM. 23 Q. Correct. 24 A. Prior to the official announcement? I think at some 25 point I became the candidate select, but I don't think</p>
<p style="text-align: right;">Page 70</p> <p>1 didn't you? 2 A. Yes. 3 Q. One other question on this document actually. As you 4 look at page 460, at the bottom there's a February 21 5 email. 6 A. Yes. 7 Q. And it refers to point 8 of the attachment. This 8 again has to do with the mayor's existing executive 9 team; right? 10 A. Yes. 11 Q. And in this time -- this is from Mr. Baird again; 12 right? 13 A. Yes. 14 Q. And he's really explicit. He says, other than a few 15 grammatical nits, and some more language around point 16 8, so we can manage expectations if Kevyn needs to 17 make some personnel changes. So he's clearly 18 referring here to you making personnel changes that 19 could affect the mayor's existing executive team; 20 isn't he? 21 A. Yes, this wasn't written to me, but I'll read it. I 22 mean to myself. Yes, document speaks for itself, but 23 that seems to say that. 24 Q. Isn't it clear at this point that it was envisioned 25 and understood that Kevyn Orr, you Mr. Orr, were in</p>	<p style="text-align: right;">Page 72</p> <p>1 that I actually accepted the job -- that I was going 2 to take the job until the day I resigned, which was 3 March 15th. I mean, I may have said yes, I'm all in 4 or something like that, subject to background 5 investigation and stuff like that. 6 Q. And that would have been sometime prior to March 13th? 7 A. I think I became the finalist sometime prior to March 8 13th, yes. 9 Q. And that's when it became final subject to passing the 10 background, yes? 11 A. Right, and resigning from the firm and some other 12 things. 13 Q. Now, at that point and time and up to the time that it 14 became official that you were going to be the EM, did 15 you have any conversations with anyone at the state or 16 city level about the possibility of the Chapter 9 17 filing? 18 A. Probably, yes. 19 Q. And can you tell me with whom those conversations took 20 place and when? 21 A. No, I don't think I had them -- those types of 22 conversations with Rich Baird, those were more about 23 the job requirements and background. If you have 24 something to refresh my recollection. 25 Q. I'm just asking a question.</p>

<p>Page 73</p> <p>1 A. Yeah, I don't recall -- I may have had about filing a 2 Chapter 9 or about the possibility of a Chapter 9? 3 Q. Either, both. 4 A. Okay. I don't recall. 5 Q. Okay. Now, at some point you -- when you became the 6 Emergency Manager or the Emergency Financial Manager, 7 you became an officer of the state and subject to the 8 state laws; is that right? 9 A. No. I am a contractor to the state. 10 Q. But you do -- you are subject to the state laws; are 11 you not? 12 A. Yes, I think -- 13 Q. And in fact, you're obligated to uphold the state 14 laws; are you not? 15 A. I don't know if my contract says that I'm obligated -- 16 I think my contract says I'm obligated to do my duties 17 to the best of my abilities and I think it requires me 18 not to have any obligations due to the state, but I 19 don't know if it requires me to uphold state laws. 20 Q. Is it your view that as Emergency Manager you are not 21 required to comply with state laws and obey state 22 laws? 23 A. I think it's my view as the Emergency Manager that I'm 24 required to discharge my duties as the best of my 25 ability to rectify the financial emergency of the</p>	<p>Page 75</p> <p>1 A. No. 2 MR. ULLMAN: Objection, calls for legal 3 conclusion. 4 Q. So I'm asking you is there anything in PA 436 that 5 specifically says that you're entitled to not comply 6 with state law? 7 A. I -- we're being somewhat circular here. 8 Q. It's like cat and mouse. Is there a general provision 9 in PA 436 that says the Emergency Manager need not 10 comply with the laws of Michigan State? 11 A. My testimony is -- 12 Q. Can you just answer my question? You could say yes, 13 no or I don't know. 14 A. I'm trying to answer your question, if you let me. 15 Q. No, I would like a direct answer to my question, not a 16 speech. 17 A. I'm trying to give you a direct answer. 18 Q. Okay, let's hear it. 19 A. I was going to give it to you. The statute allows the 20 Emergency Manager to take certain actions which by 21 definition would impact certain state laws. Your 22 question was whether there's a general prohibition 23 that exempts. That may be a legal conclusion, because 24 there are many powers under 436 and someone may 25 conclude, the Court for instance, that generally the</p>
<p>Page 74</p> <p>1 City. 2 Q. Okay, thank you. 3 MR. ULLMAN: Can you have my question read 4 back, please? And I would like an answer. 5 (Record read back as requested.) 6 A. The reason I said what I said is because I think the 7 statute allows me to abrogate certain state laws and 8 so when you say you comply with state laws, 436 9 clearly allows me not to comply with certain laws, 10 so -- 11 Q. And -- okay, so it's your view that under PA 436 you 12 have the ability not to comply with certain state 13 laws? 14 A. Yes. 15 Q. And what section of 436 gives you that ability? 16 A. There's section 12 gives me the authority to abrogate 17 contracts, to readdress financial agreements, there 18 are a number of powers in the statute, take over 19 underfunded pensions, if that's what you're looking 20 for. There are a number of provisions in the statute 21 that mean I don't have to comply with state law. 22 Q. Okay. And PA 436 is itself part of state law; right? 23 A. Yes. 24 Q. So if you did something that's specifically authorized 25 under PA 436, would it be in violation of state law?</p>	<p>Page 76</p> <p>1 intent is to allow the Emergency Manager to do certain 2 things in a financial emergency. I'm trying to 3 respond to your question as the Emergency Manager. 4 There are certain laws that clearly under 436 I have 5 the authority to abrogate. 6 Q. Is the constitution of the State of Michigan one of 7 those? 8 A. I think that's a legal conclusion. 9 Q. No, I'm asking your understanding as the Emergency 10 Manager. 11 A. My understanding is that's a legal conclusion. 12 Q. You -- apart from saying it's a legal conclusion, do 13 you have a view on that one way or the other? I'm not 14 asking for your legal opinion, I'm asking for your 15 view in your capacity as Emergency Manager whether PA 16 46 allows you to disregard the strictures of the 17 Michigan Constitution? 18 A. I think that's a legal conclusion. I'll explain it, 19 if you want me to. 20 Q. I'm just asking whether you have a view. 21 A. Yes, I think it's a legal conclusion. 22 Q. And what is the legal conclusion that you believe 23 exists? 24 A. Without going into discussions with attorneys and 25 others, the legislature of the State of Michigan is</p>


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<p style="text-align: right;">Page 81</p> <p>1 aware of any words in PA 436 that specifically</p> <p>2 authorize the Emergency Manager to disregard the</p> <p>3 strictures of Article 9, Section 24? I'm asking about</p> <p>4 words, in haec verba, I'm not asking interpolations or</p> <p>5 extrapolations. I'm asking whether to your knowledge</p> <p>6 if there is anything in PA 436 that explicitly says</p> <p>7 that.</p> <p>8 A. I'm going to stay away from explicitly, but I'll try</p> <p>9 to answer your question. If your question is is there</p> <p>10 anything in 436 that says the Emergency Manager is</p> <p>11 exempt from Article 9, Section 24, I've not read that</p> <p>12 in the statute. But when you say explicitly, as I've</p> <p>13 said several times now, those interpretations require</p> <p>14 legal conclusions that are in fact being discussed and</p> <p>15 briefed as we want, so I'm being very careful not to</p> <p>16 give an interpretation as the Emergency Manager that's</p> <p>17 contrary to what the statute provides. Ultimately I</p> <p>18 suspect a jurist will have to resolve that issue.</p> <p>19 Q. You took an oath of office when you became the</p> <p>20 Emergency Manager; did you not?</p> <p>21 A. Yes, yes, I did.</p> <p>22 Q. And I think these are the words you swore. You said,</p> <p>23 I do solemnly swear that I will support the</p> <p>24 constitution of the United States and the constitution</p> <p>25 of this state and that I will faithfully discharge the</p>	<p style="text-align: right;">Page 83</p> <p>1 what we call unfunded pension obligations.</p> <p>2 Q. Both, I'm asking collectively.</p> <p>3 A. Yes, they're the largest cohort of unsecured claims.</p> <p>4 Q. And at the time that you became the EM, how large did</p> <p>5 you understand the un -- I'm sorry?</p> <p>6 A. No, I'm just saying at the time it came to me, how</p> <p>7 large I understand the unfunded amount to be?</p> <p>8 Q. The unfunded retirement obligations to both the</p> <p>9 pension and what you call OPEB.</p> <p>10 A. It was unclear, because at the time I became Emergency</p> <p>11 Financial Manager, there were reports issued by the</p> <p>12 State that put the total debt of the City at</p> <p>13 12 billion I believe it is, then there were subsequent</p> <p>14 reports that followed on that and put it at</p> <p>15 14 billion. So at various times the figure grew.</p> <p>16 Q. And the two aspect components I've asked about, the</p> <p>17 pension and the OPEB, those were very large; were they</p> <p>18 not?</p> <p>19 A. I don't think they're large. There were still several</p> <p>20 billions of dollars.</p> <p>21 Q. They were in the billions of dollars?</p> <p>22 A. Yes.</p> <p>23 Q. And those were among -- there were obviously a number</p> <p>24 of issues but those were among the financial issues</p> <p>25 that were impediments to Detroit's fiscal health; is</p>
<p style="text-align: right;">Page 82</p> <p>1 duties of the office of Emergency Financial Manager,</p> <p>2 City of Detroit, according to the best of my ability.</p> <p>3 Do you remember giving that oath?</p> <p>4 A. Yes.</p> <p>5 Q. And were you speaking truthfully when you gave that</p> <p>6 oath?</p> <p>7 A. Yes.</p> <p>8 Q. And did the oath you give apply equally to how you've</p> <p>9 conducted yourself as Emergency Manager when PA 436</p> <p>10 became effective?</p> <p>11 A. I believe so.</p> <p>12 Q. Now, after you became the Emergency Manager, you</p> <p>13 certainly specifically considered the question of a</p> <p>14 Chapter 9 filing; right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And did you consider specifically the issue of</p> <p>17 whether the City had in the course of a Chapter 9</p> <p>18 filing the right to seek relief that would adversely</p> <p>19 affect pensions that were vested?</p> <p>20 A. Yes.</p> <p>21 Q. And isn't it correct that the retirement obligations</p> <p>22 were among the largest obligations that are facing the</p> <p>23 City of Detroit?</p> <p>24 MR. ULLMAN: Objection, form.</p> <p>25 A. Retired -- retired obligations meaning both OPEB and</p>	<p style="text-align: right;">Page 84</p> <p>1 that right?</p> <p>2 A. I believe so.</p> <p>3 Q. And did the governor share that view with you?</p> <p>4 A. No.</p> <p>5 Q. He thought that the pension and OPEB obligations were</p> <p>6 not impediments to Detroit's fiscal health?</p> <p>7 A. No, the governor -- the only discussion I had with the</p> <p>8 governor was at a very high level about the dire</p> <p>9 straits of the City and the need for some -- it was</p> <p>10 actually the dire straits of the City and the need for</p> <p>11 some reform. There was no specific discussion about</p> <p>12 pension or OPEB.</p> <p>13 Q. Now, at some point after you became the Emergency</p> <p>14 Manager, did you have discussions with the governor</p> <p>15 about a Chapter 9 filing to among other things get out</p> <p>16 of the pension obligations that the City owed?</p> <p>17 MR. SHUMAKER: Object to form.</p> <p>18 A. Yes, I believe so.</p> <p>19 Q. And when did those take place?</p> <p>20 A. Since becoming Emergency Manager on the 25th I've had</p> <p>21 regular conversations with the governor. Typically</p> <p>22 weekly. I don't recall the specific conversation when</p> <p>23 they came up. I will say that it wasn't within our</p> <p>24 initial conversations.</p> <p>25 Q. Okay. And we're talking -- these conversations, are</p>

<p>Page 85</p> <p>1 we talking about from the time you became the 2 Emergency Financial Manager or the EM? In other 3 words, would it be -- are we talking about the early 4 or the late March time frame? 5 A. Yeah, I don't think after the rollout and me becoming 6 effective on the 25th, I think the new statute came 7 into play within days of that. I don't think the 8 governor and I had any discussions from the -- I'm not 9 trying to draw a gap between EFM and EM. 10 Q. So this would have been within a few weeks? 11 A. Yes. 12 Q. After you became the EM would it be fair to say by 13 then you certainly had the discussions with the 14 governor? 15 A. Yeah, but here again they weren't specific discussions 16 about pension and OPEB, they were more discussions 17 about getting to what the numbers were and the initial 18 processes of getting into the City. 19 Q. Okay. And in the course there were discussions that 20 you indicated about the possibility of filing a 21 Chapter 9? 22 A. Yes, those discussions came on later. 23 Q. And one of the things the Chapter 9 filing would 24 potentially allow you to do is get out of the pension 25 obligations; is that right?</p>	<p>Page 87</p> <p>1 A. I'm taking my time because I'm trying to remember. 2 There were a number of different analyses and briefing 3 papers and -- that would come across the desk and I'm 4 not sure any of them focused solely on state law. 5 Q. Okay. And what else -- what other law did they focus 6 on if not solely state law? 7 A. They may have focused on state law and federal law. 8 Q. So you don't recall if there was any analysis that 9 just looked at state law? 10 A. No, sitting here today, I don't recall. There may 11 have been, but I don't recall. 12 Q. And were you aware prior to the bankruptcy filing that 13 under state law alone the pension obligations could 14 not be diminished or impaired? 15 A. This is the discussion we had about five to ten 16 minutes ago about whether or not state law permitted 17 it and I will go back to my answer with that. It 18 seems to suggest a legal conclusion based upon what 19 the statute 436 provides and the intent of the 20 legislature. 21 Q. Let me ask you a different question. 22 Is there anything in PA 436 that allows in 23 your view the Emergency Manager to impact or adversely 24 affect pension rights in the absence of a Chapter 9 25 bankruptcy filing?</p>
<p>Page 86</p> <p>1 A. Yes. 2 MR. SHUMAKER: Object to form. 3 Q. Now, I take it after you became Emergency Manager you 4 explored what the issues and the options were with, 5 among other things, the pension liabilities that the 6 City faced? 7 A. Not -- no, the initial thing we started to do was to 8 try to drill down on the extent of the City's 9 financial obligations. 10 Q. That really wasn't my question. I didn't ask what the 11 first thing you did was. 12 MR. ULLMAN: So why don't you just read 13 back my question? 14 (Record read back as requested.) 15 A. At some point. 16 Q. And do you recall when -- scratch that. 17 And did you look at various options that 18 were available to you as EM to reduce the pension 19 liabilities that existed for the City? 20 A. Among other things. 21 Q. And did you look at what avenues existed under state 22 law without recourse to any federal law? In other 23 words, independent of what any federal law might 24 apply, what remedies or relief if any was available 25 under state law only?</p>	<p>Page 88</p> <p>1 MR. SHUMAKER: Objection, calls for legal 2 conclusion. 3 A. It's the same discussion we had five to ten minutes 4 ago that I want to be very careful with and I don't 5 want to draw legal conclusion that says there's 6 nothing there. It's a discussion we had about 436, 7 the intent of the legislature and Article 9. 8 Q. I'm asking independent of Article 9, Mr. Orr. Please 9 focus on the question. 10 A. I don't -- I don't understand your question because 11 parties can negotiate anything. 12 Q. I'm asking -- okay, putting aside negotiation -- 13 A. Uh-huh. 14 Q. -- I'm asking apart from the possibility of a Chapter 15 9 filing, and by the way when we talk about impair or 16 diminish, understand that if the state is impairing or 17 diminishing, it's nonconsensual. Right? That's the 18 whole point? 19 A. No, that's -- that's a conclusion that you're making. 20 Parties can agree to I am -- an impaired class can 21 agree to diminish their interests. If you're reading 22 it that way that says it's nonconsensual, that's a 23 conclusion you're drawing but the language itself -- 24 Q. We don't need to get into this. 25 A. Okay.</p>


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<p>Page 93</p> <p>1 provided in the statute subject to a determination by 2 a court. The language of the statute speaks for 3 itself. 4 Q. And since it does speak for itself and you have read 5 it, and putting aside -- I understand your position 6 that there may be arguments that can be made, did you 7 see anything in that statute that, putting aside 8 Chapter 9 and putting aside the possibility of 9 consensual diminishment, states that the Emergency 10 Manager has the authority to diminish or impair 11 pension rights that are protected under Article 9, 12 Section 24? 13 MR. SHUMAKER: Objection, this witness 14 certainly has not had time to review the entire 15 statute as he sits here. You're talking about ever? 16 Q. How many -- how many times have you reviewed the 17 statute, Mr. Orr? 18 A. I don't know. Certainly several dozen. 19 Q. Okay. And you have your heavily annotated copy there? 20 A. I have a copy of the statute. 21 Q. So I assume if there were words in the statute that 22 specifically said, yeah, the Emergency Manager can 23 violate Article 9, Section 24, you would know where 24 they are; wouldn't you? 25 MR. SHUMAKER: Objection to form.</p>	<p>Page 95</p> <p>1 A. Yes. 2 Q. And this is something that you put out; isn't it? 3 A. Yes. 4 Q. And this was after you were Emergency Manager; yeah? 5 A. Yes. 6 Q. Okay. And do you recall giving an interview on radio 7 about the plan? 8 A. I gave many interviews on the radio. Is there a 9 specific one? 10 Q. Yeah, there is. There is one that was made on May 11 12th, 2013 on WWJ and there's one piece of it that I 12 would like to focus on in particular. I'll read it to 13 you. I have the article in which it's quoted, but 14 maybe you remember saying this. 15 A. Okay. 16 Q. The quotation is -- about this plan, I believe it's 17 this plan, you said the public can comment but it is 18 under the statute, it is my plan and it's within my 19 discretion and obligation to do it. This isn't a 20 plebiscite. We are not like negotiating the terms of 21 the plan. It's what I'm obligated to do. 22 Do you recall making that statement on the 23 radio? 24 A. Yes. 25 Q. And you were talking about the May 12th plan when you</p>
<p>Page 94</p> <p>1 A. I don't know if they say violate. But here again, I 2 keep saying to you again and again these issues calls 3 for legal conclusions. Statute speaks for itself. I 4 think we discussed earlier today was there anything 5 that expressly said that and we said no, but I don't 6 want to be in a position where we foreclose any 7 potential arguments. I'm being very careful. 8 Q. In your consideration of the pension issue is it 9 correct that the conclusion that you reach was that 10 one way to get -- for the City to diminish and get out 11 of its pension obligations would be to go through a 12 Chapter 9 filing? 13 THE WITNESS: Could you read the question 14 back? 15 (Record read back as requested.) 16 A. Yes, I think at some point that we reached that 17 conclusion. 18 Q. And do you recall when that conclusion was reached? 19 A. No. 20 Q. Let me show you another document. We'll mark this as, 21 what are we up to, 8? 22 A. Uh-huh. 23 (Marked Exhibit No. 8.) 24 Q. You're familiar with Exhibit 8; aren't you? It's the 25 financial and operating plan of May 12th, 2013?</p>	<p>Page 96</p> <p>1 said that? 2 A. Yes, financial and operating plan. 3 Q. And the May 12th plan referred to the possibility of 4 reducing or eliminating retirement benefits; didn't 5 it? 6 A. Yes. 7 Q. And in fact, just going through this briefly on pages 8 16 through 17, if I have this right, you're reporting 9 about 5-point billion in unfunded medical costs; is 10 that right? 11 A. Yes. 12 MR. SHUMAKER: Get to the page. I'm sorry, 13 what page was that, counsel? 14 MR. ULLMAN: Sixteen. 15 MR. SHUMAKER: Sixteen. At the bottom. 16 A. Yes. 17 Q. Then on the next page you wrote that as part of the 18 comprehensive restructuring plan, the Emergency 19 Manager will evaluate options to reduce or eliminate 20 certain healthcare costs for both active and retired 21 employees? 22 A. Yes. 23 Q. And that was a true statement? 24 A. Yes. 25 Q. And then if you turn back a little to page 3 of this</p>

<p>Page 97</p> <p>1 document, I think you indicate that the pension</p> <p>2 liabilities are underfunded by at least 600 million</p> <p>3 and possibly more, possibly significantly more?</p> <p>4 MR. SHUMAKER: Can you direct his</p> <p>5 attention?</p> <p>6 MR. ULLMAN: Yeah, it's in the first full</p> <p>7 paragraph, the last three lines.</p> <p>8 Q. It says, the city's pensions are underfunded by at</p> <p>9 least 0.6 billion and perhaps significantly more once</p> <p>10 appropriate actuarial assumptions and current data are</p> <p>11 considered?</p> <p>12 A. Yes.</p> <p>13 Q. And that was -- you view that as an accurate statement</p> <p>14 also; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And then if you go to page 20 to 21, beginning on page</p> <p>17 20 you sort of resummarize these obligations, these</p> <p>18 liabilities and then you make a couple statements on</p> <p>19 page 21 at the top you say, restructuring the City's</p> <p>20 liabilities in a fair and equitable manner across all</p> <p>21 relevant stakeholders is necessary for the City's</p> <p>22 operational and financial survival. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. You go on to say that the restructuring of the City's</p> <p>25 debt and other liabilities is essential to provide the</p>	<p>Page 99</p> <p>1 plan is to reduce them; true?</p> <p>2 A. No, I think what we said here is that they must be</p> <p>3 adjusted in a fair and equitable manner across all</p> <p>4 stakeholders which would necessarily mean an</p> <p>5 adjustment, yes.</p> <p>6 Q. In your view didn't that mean they had to be adjusted</p> <p>7 downwards?</p> <p>8 A. What we have said and what I said at May 12th and</p> <p>9 subsequently throughout is we needed -- we needed to</p> <p>10 have a dialogue about what the status of an adjustment</p> <p>11 would be, because it was clear the City couldn't pay.</p> <p>12 Q. That's all I'm getting at, Mr. Orr. The question was</p> <p>13 very simple. That what you are saying here is that</p> <p>14 you needed to get these benefits reduced?</p> <p>15 A. Yes, that's what I said.</p> <p>16 Q. And is it correct that under Michigan law, again just</p> <p>17 under Michigan law without reference to the bankruptcy</p> <p>18 statute, you didn't have the authority or the ability</p> <p>19 to reduce pension benefits?</p> <p>20 MR. SHUMAKER: Objection, calls for legal</p> <p>21 conclusion.</p> <p>22 A. This is the same line of inquiry that we've gone</p> <p>23 through before. I'll state the same response, if you</p> <p>24 would like.</p> <p>25 Q. No, I can accept that your response would be the same.</p>
<p>Page 98</p> <p>1 City with a strong balance sheet and it continues. Do</p> <p>2 you see that? It's kind of in the middle of that top</p> <p>3 paragraph.</p> <p>4 A. Yes.</p> <p>5 Q. And then the next paragraph that says, this plan</p> <p>6 recognizes that interest rates, amortization, it</p> <p>7 mentions some other things, continues with security</p> <p>8 interests, legacy liabilities and all other aspects of</p> <p>9 short- and long-term debt must be evaluated as part of</p> <p>10 the City's comprehensive restructuring. It goes on,</p> <p>11 significant and fundamental debt relief must be</p> <p>12 obtained to allow the City's revitalization to</p> <p>13 continue and succeed?</p> <p>14 A. Yes.</p> <p>15 Q. In all those statements they all applied to</p> <p>16 obligations that were owed as well to retirees; is</p> <p>17 that right?</p> <p>18 A. I believe so. I believe we were talking about we</p> <p>19 needed to do something to address those obligations.</p> <p>20 Q. And that's what you refer to here as legacy</p> <p>21 liabilities, the pension and healthcare obligations?</p> <p>22 A. In part, yes.</p> <p>23 Q. They're included in legacy liabilities; right?</p> <p>24 A. Yes.</p> <p>25 Q. And the plan here was, as you're saying here, that the</p>	<p>Page 100</p> <p>1 A. Okay.</p> <p>2 Q. Let me ask you a different question.</p> <p>3 A. Thank you.</p> <p>4 Q. Prior to the bankruptcy filing did you identify any</p> <p>5 course of action under Michigan law, putting aside the</p> <p>6 possibility of a consensual resolution, that would</p> <p>7 allow the Emergency Manager to reduce pension benefits</p> <p>8 without going through Chapter 9?</p> <p>9 A. Here again, to the extent it calls for legal</p> <p>10 conclusion, my prior answer, but I'll try to be</p> <p>11 responsive. Yes, we did.</p> <p>12 Q. And what were those alternatives?</p> <p>13 A. Well, that's why we continued to say to the various</p> <p>14 interested groups we needed to engage in a dialogue.</p> <p>15 Q. I'm saying apart from a consensual resolution.</p> <p>16 A. Okay.</p> <p>17 Q. Okay. And what I'm asking is apart from the idea that</p> <p>18 people could get together and agree --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- did you come up with any other course of action</p> <p>21 under Michigan law that did not involve a bankruptcy</p> <p>22 filing and that would allow the Emergency Manager to</p> <p>23 reduce pension benefits to retirees?</p> <p>24 A. I don't mean to be evasive or trulish, but there were</p> <p>25 a number of different alternatives that were</p>


<p style="text-align: right;">Page 101</p> <p>1 discussed. Some of them, frankly, by keeping the City</p> <p>2 in a steady state would have effectively reduced those</p> <p>3 pension obligations, yes.</p> <p>4 Q. So the course that was considered was simply not</p> <p>5 meeting the pension obligations as they came due; is</p> <p>6 that right?</p> <p>7 A. No, it's just what I said. By keeping it in a steady</p> <p>8 state we weren't meeting our obligations there</p> <p>9 currently.</p> <p>10 Q. And that would include also not meeting the pension</p> <p>11 obligations?</p> <p>12 A. Yes. As I said, keeping in a steady state would by</p> <p>13 definition reduce liabilities. That's what the City</p> <p>14 was already doing.</p> <p>15 Q. And was there any other avenue that was considered as</p> <p>16 potentially viable to reduce the pension benefits</p> <p>17 apart from what you just said and apart from going</p> <p>18 through a Chapter 9 filing and again putting aside</p> <p>19 some sort of negotiated resolution?</p> <p>20 A. Well, we didn't consider the steady state alternative</p> <p>21 viable.</p> <p>22 Q. Uh-huh.</p> <p>23 A. We thought that was quite problematic. Putting aside</p> <p>24 the discussion we had earlier this morning about legal</p> <p>25 conclusions and what we possibly could do under the</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. Doesn't it say that they need to be reduced? Doesn't</p> <p>2 it say that?</p> <p>3 A. Yes.</p> <p>4 Q. And it says they're unsustainable; doesn't it?</p> <p>5 A. Yes. I think generally speaking it says that, yes.</p> <p>6 Q. And we'll go through some of the specifics.</p> <p>7 A. Okay.</p> <p>8 Q. I think in here early on, around pages 23 to 24, you</p> <p>9 note -- I think we discussed this a little bit -- that</p> <p>10 the unfunded pension liability right now as of June</p> <p>11 14th is more or less on the books as 643 million, but</p> <p>12 it could be as large as 3.5 billion; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And that figure, that 3.5 billion figure, that's work</p> <p>15 that's been done for the City by the Milliman firm; is</p> <p>16 that right?</p> <p>17 A. Well, among others, I think Milliman worked off on</p> <p>18 initial Gabriel Rotors projections and then did their</p> <p>19 own, yes.</p> <p>20 Q. And are you aware that that number, the 3.5 billion,</p> <p>21 has been disputed by various parties or objectors as</p> <p>22 regards the actuarial assumptions that were used?</p> <p>23 A. Yes.</p> <p>24 Q. And at least one firm has taken the position that the</p> <p>25 number should be much less than 3.5 billion?</p>
<p style="text-align: right;">Page 102</p> <p>1 statute, were there any other -- other than</p> <p>2 consensually inviting resolutions, a potential Chapter</p> <p>3 9 filing, any other alternatives? And a steady state,</p> <p>4 those three, any other? I don't think there were any</p> <p>5 other alternatives.</p> <p>6 Q. Okay. Let's move on to the next document, which we'll</p> <p>7 mark as Exhibit 9.</p> <p>8 (Marked Exhibit No. 9.)</p> <p>9 (Discussion held off the record.)</p> <p>10 Q. Okay, let's look at Exhibit 9. This is a proposal for</p> <p>11 creditors, June 14, 2013. You've indicated you're</p> <p>12 familiar with it?</p> <p>13 A. Yes.</p> <p>14 Q. Now, this document, as I understand it, spells out in</p> <p>15 general terms what you thought the problems were</p> <p>16 facing Detroit and what you wanted to do about them?</p> <p>17 A. Well, it spells out in general terms what we think the</p> <p>18 problems are and it makes a proposal to what we think</p> <p>19 we should do about them.</p> <p>20 Q. Okay. And among the significant issues facing the</p> <p>21 City were retirement obligations we've discussed;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And the proposal refers to cutting them; correct?</p> <p>25 A. Point me to a specific page, please.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I think several entities and firms have taken that</p> <p>2 position yes.</p> <p>3 Q. And you indicated you're not an actuary; correct?</p> <p>4 A. That's correct.</p> <p>5 Q. So you have no expertise in that?</p> <p>6 A. I rely on our professionals and consultants, yes, who</p> <p>7 are actuaries.</p> <p>8 Q. So the accuracy of the 3.5 billion or some other</p> <p>9 figure will be an issue that's going to be ultimately</p> <p>10 decided by a court if this matter proceeds; is that</p> <p>11 right?</p> <p>12 A. We think it's accurate, but it may ultimately be</p> <p>13 decided by a court.</p> <p>14 Q. Now, on pages 90 to 91, if I understand this, and</p> <p>15 particularly on 91, this is showing the current</p> <p>16 projections, right, as I understand this particular</p> <p>17 schedule?</p> <p>18 A. Yes, it's the ten-year projections.</p> <p>19 Q. Right. Under what I think has been referred to as a</p> <p>20 steady state? In other words, this is without the</p> <p>21 restructuring?</p> <p>22 A. Yes, I think this is the ten-year steady state General</p> <p>23 fund only projection.</p> <p>24 Q. If you look at page 91, it shows, if nothing changes,</p> <p>25 projections for both pension, contributions and</p>

<p>Page 105</p> <p>1 healthcare benefits, right, and then the top headings?</p> <p>2 A. Yes.</p> <p>3 Q. And for pensions, just using 2014 as an example, we</p> <p>4 see the number is 199.5 million?</p> <p>5 A. Yes.</p> <p>6 Q. And for the health benefits for 2014 it's</p> <p>7 140.7 million?</p> <p>8 A. Yes.</p> <p>9 Q. And obviously if you look over the next several years,</p> <p>10 it goes up?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then so that I understand this, if you look</p> <p>13 at pages 97 to 98, this is the same spreadsheet but</p> <p>14 now showing what the figures would look like if this</p> <p>15 proposal for restructuring were to go through; is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And so if we look again comparably for 2014, let's</p> <p>19 see, and let's start with -- I guess we can start with</p> <p>20 the pensions. On page 97, for 2014, we now see an</p> <p>21 item DC pension contribution.</p> <p>22 A. Uh-huh.</p> <p>23 Q. And that's -- that DC stands for what?</p> <p>24 A. You mean the DC?</p> <p>25 Q. Yeah, what do the words stand for?</p>	<p>Page 107</p> <p>1 147 million?</p> <p>2 A. Retiree health, yes.</p> <p>3 Q. For retiree health?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Under this proposal, the restructuring proposal, I</p> <p>6 don't see any line entry for the retiree health</p> <p>7 benefits.</p> <p>8 A. Yes.</p> <p>9 Q. So they're essentially being cut; correct?</p> <p>10 A. Well, the obligation is being provided with a</p> <p>11 different program, but yes, the City would not have an</p> <p>12 obligation going forward of that magnitude.</p> <p>13 Q. And going back to the pension contributions, you know,</p> <p>14 we had talked about a diminution on the order of 80</p> <p>15 percent from the 199.5 figure, and I think it's the</p> <p>16 City's contention that the 199.5 figure is really</p> <p>17 understated, right, because the obligations are really</p> <p>18 a lot higher?</p> <p>19 A. I think we think the liabilities -- this is the steady</p> <p>20 state projection on 91. I think we think the</p> <p>21 liabilities are higher because what we represented on</p> <p>22 the second page of 98 is the estimated undersecured</p> <p>23 claims for out years as opposed to a ten-year</p> <p>24 projection.</p> <p>25 Q. Right. And if the liabilities were really greater</p>
<p>Page 106</p> <p>1 A. Defined contribution.</p> <p>2 Q. Defined contribution?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Now, the existing -- the pension plan that exists</p> <p>5 under the steady state projections, is that defined</p> <p>6 contribution plan?</p> <p>7 A. That would be switched over. No, no, defined -- the</p> <p>8 steady state scenario?</p> <p>9 Q. That's a defined benefit?</p> <p>10 A. That's a defined benefit plan.</p> <p>11 Q. So what you're projecting here is a switch over to a</p> <p>12 defined contribution program and for 2014 we see the</p> <p>13 number for the city's contributions is now</p> <p>14 25.4 million; is that right?</p> <p>15 A. Yes, that's -- yes.</p> <p>16 Q. And that compares with the -- what was the figure?</p> <p>17 199.5 million that we saw under the as is?</p> <p>18 A. Yes, projections.</p> <p>19 Q. Yes. So the diminution it looks just on the rough</p> <p>20 math that the City's pension contributions under the</p> <p>21 restructuring are being cut by about 80 percent; is</p> <p>22 that right?</p> <p>23 A. Under 75 million, 80 percent, sure, roughly.</p> <p>24 Q. And for health, the health benefits, which we saw that</p> <p>25 were, what, under the current scenario something like</p>	<p>Page 108</p> <p>1 than the diminution from the steady state to the</p> <p>2 restructuring scenario would be greater than 80</p> <p>3 percent; wouldn't it?</p> <p>4 A. It might be. I mean, we've said 80 percent. I mean,</p> <p>5 199.5 less 25, you know, you just roughly cut those in</p> <p>6 half, that's a 12 and 1/2 percent, but you know, 88</p> <p>7 percent, somewhere in that neighborhood.</p> <p>8 Q. Now, the people who are -- the retirees who are</p> <p>9 getting impacted from these -- by these cuts in the</p> <p>10 proposed restructuring, these are who? These are men</p> <p>11 and women who previously served the City and are now</p> <p>12 retired?</p> <p>13 A. Yeah, they're two pension plans: one for General</p> <p>14 services and the other for Police and Fire.</p> <p>15 Q. And these individuals that serve the City in both</p> <p>16 public safety and nonpublic safety capacities?</p> <p>17 A. Uniform and nonuniform, yes.</p> <p>18 Q. And were these -- I guess the issue comes because the</p> <p>19 pension liabilities and the healthcare benefits that</p> <p>20 may be due are not -- there's not sufficient funding</p> <p>21 that was put into them; correct?</p> <p>22 A. Well, the healthcare benefit has no funding, the</p> <p>23 \$5.7 billion. And the pension underfunding has our</p> <p>24 estimate of the level of underfunding, the unfunded</p> <p>25 portion of the pensions, in them. There are assets</p>



<p>Page 109</p> <p>1 within both pension funds, it's the level of</p> <p>2 underfunding that we're talking to.</p> <p>3 Q. Right. And it's the underfunding that's resulting in</p> <p>4 the cuts to the retirees; correct?</p> <p>5 A. Well, this is a proposal I'll say again. We have said</p> <p>6 again and again we want to have a discussion so we can</p> <p>7 figure out what the rightsizing is.</p> <p>8 Q. Can you please just answer the question, Mr. Orr?</p> <p>9 A. I am, but you say cuts, you say cuts and that has a</p> <p>10 different connotation and I'm trying to explain it</p> <p>11 fully.</p> <p>12 Q. This proposal the benefits get cut substantially;</p> <p>13 don't they?</p> <p>14 A. Yes, but we need to have a discussion.</p> <p>15 Q. Now, the individuals whose rights and expectations and</p> <p>16 benefits are being impacted under this, they weren't</p> <p>17 themselves responsible for the lack of funding that's</p> <p>18 resulted in these problems; were they?</p> <p>19 MR. SHUMAKER: Objection, form, foundation.</p> <p>20 A. That's -- that's a loaded question about</p> <p>21 responsibility and --</p> <p>22 Q. I'm asking if the individual retirees whose pensions</p> <p>23 and healthcare benefits may be impacted under this.</p> <p>24 A. That's a loaded question.</p> <p>25 MR. SHUMAKER: Same objection.</p>	<p>Page 111</p> <p>1 propose to reduce would get a share of the note, yes.</p> <p>2 Q. And is there any way to tell from this document how</p> <p>3 much any individual retiree would ultimately get if</p> <p>4 the notes go ahead and are issued?</p> <p>5 A. Not from this document.</p> <p>6 Q. There's no way to tell how much cash value any retiree</p> <p>7 would receive under this plan that's laid out here</p> <p>8 where they get notes?</p> <p>9 A. It is my understanding that there are a number of</p> <p>10 different plans and benefits and factors that go into</p> <p>11 that determination for any specific retiree.</p> <p>12 Q. Okay. Now, Chapter 9 is not referred to in this</p> <p>13 restructuring plan; is it?</p> <p>14 A. I don't think we did.</p> <p>15 Q. And I think you indicated before that if this was not</p> <p>16 agreed to by the various constituencies, then the only</p> <p>17 way to implement this restructuring plan would be, if</p> <p>18 at all, would be to try to go ahead and do that</p> <p>19 through Chapter 9; is that right?</p> <p>20 A. I think what I said before, I think you're referring</p> <p>21 to the May 12th 45-day operating plan, but I think</p> <p>22 what I said before on June 10th and June 14th is we</p> <p>23 needed to engage in a dialogue, because we didn't want</p> <p>24 to go to Chapter 9.</p> <p>25 MR. ULLMAN: That wasn't my question. Can</p>
<p>Page 110</p> <p>1 A. I'm going to be very careful here because while</p> <p>2 recognizing that these are typically rank and file</p> <p>3 employees, there's a whole bunch of issues regarding</p> <p>4 responsibility and some of it has been written about</p> <p>5 quite extensively.</p> <p>6 Q. And you're aware that at least the vast majority of</p> <p>7 the City employees, the retirees, count on their</p> <p>8 pension and healthcare benefits in order to help make</p> <p>9 ends meet?</p> <p>10 A. I don't know if I'm aware of that as a fact. I know</p> <p>11 certainly that pensions are important to retirees.</p> <p>12 Q. Now, going back to page 98 of this restructuring</p> <p>13 proposal, you pointed to a box --</p> <p>14 A. Yes.</p> <p>15 Q. -- that shows a very large unsecured claim amount for</p> <p>16 unsecured pension and OPEB?</p> <p>17 A. Yes.</p> <p>18 Q. And that's 9.2 billion?</p> <p>19 A. Yes.</p> <p>20 Q. And as I understand this proposal, the retirees who</p> <p>21 fall into this category whose pensions and healthcare</p> <p>22 benefits are being cut back by this would end up with</p> <p>23 unsecured claims and get a share of the notes that the</p> <p>24 City is intending to issue; is that right?</p> <p>25 A. The retirees whose pensions and healthcare benefits we</p>	<p>Page 112</p> <p>1 you read my question back?</p> <p>2 (Record read back as requested.)</p> <p>3 A. Yeah, I indicated that here today.</p> <p>4 Q. I'll just ask the question again. As you understood</p> <p>5 it, if the proposal here were not agreed to or some</p> <p>6 other consensual resolution was not reached, was there</p> <p>7 any way for you as Emergency Manager to implement this</p> <p>8 plan other than to try to get it put in place through</p> <p>9 a Chapter 9 filing?</p> <p>10 A. Subject to the discussion that we've had a couple of</p> <p>11 times earlier today, what I have said is that Chapter</p> <p>12 9 is an option to achieve these goals.</p> <p>13 Q. And were you at this point aware of any option to</p> <p>14 achieve these goals other than Chapter 9 if a</p> <p>15 consensual resolution was not reached?</p> <p>16 A. There were various briefing memos and discussions, but</p> <p>17 given the time frames that we were under, and I said</p> <p>18 this at the June 10th meeting and I said it at the</p> <p>19 June 14th meeting and I want to be responsive, that if</p> <p>20 we didn't, Chapter 9 was an alternative.</p> <p>21 Q. And I don't think that's fully responsive at this</p> <p>22 point. Had you identified anything else as of June 14</p> <p>23 to get this plan implemented, any other course,</p> <p>24 putting aside consensual resolution, other than a</p> <p>25 chapter 9 file?</p>

<p style="text-align: right;">Page 113</p> <p>1 A. Nothing that would give us an orderly and 2 comprehensive resolution of these problems. 3 Q. Now, you gave an interview, that I'm sure you're 4 familiar with, with the Detroit Free Press on or 5 around June 14th. Do you remember it? I'll just tell 6 you what -- I believe you said -- and I'm sure you 7 remember this one and you can tell me. If not, I have 8 the quote. 9 A. Yeah, you can give me the quote. There's so many 10 interviews, but I'll trust your quote. 11 Q. Okay. 12 A. Okay. 13 Q. This is the quotation. Question, you said in this 14 report, referring to the June 14th proposal, that you 15 don't believe there is an obligation under our state 16 constitution to pay pensions if the City can't afford 17 it? Answer, the reason we said it that way is to 18 quantify the bankruptcy question. We think federal 19 supremacy trumps state law. 20 A. Yes. 21 Q. You don't deny making that statement? 22 A. No, I think I've said that several times. 23 Q. And the state law you were referring to that you 24 referred to as being trumped was Article 9, Section 24 25 of the state constitution; is that right?</p>	<p style="text-align: right;">Page 115</p> <p>1 A. Yes. 2 Q. I'm just going to put these letters into the record so 3 we have them. 4 A. Okay. 5 Q. I'm not sure I'm going to ask you much about them. 6 The first one is what we're going to mark 7 as Exhibit 10. 8 (Marked Exhibit No. 10.) 9 Q. This is 10. This is 10. 10 A. Thank you. 11 MR. ULLMAN: And I might as well mark 11 12 also. They kind of go together. 13 THE WITNESS: Okay. 14 (Marked Exhibit No. 11.) 15 Q. Okay, what we've marked as Exhibits 10 and 11 16 respectively are the July 16th, 2013 letter from you 17 to the governor and to the treasurer and then the 18 governor's response letter of July 18, 2013. 19 A. Yes. 20 Q. And you're obviously familiar with these documents? 21 A. Yes. 22 Q. And you wrote Exhibit 10, you signed it at least? 23 A. Yes. 24 Q. And Exhibit 11 is the governor's response; correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 114</p> <p>1 A. I believe so. 2 Q. There's no other state law that you view as relevant 3 to the pension issue; is there? 4 A. Subject to the discussions that we had earlier today. 5 Q. As being trumped? There's no other state law that you 6 regarded as being trumped; is there? 7 A. No, there's no other as being trumped. 8 Q. Trumped. 9 A. Right. 10 Q. So the answer to my question -- just so the record is 11 clear, the answer to my question is no other? 12 A. We're not referring to another state law. 13 Q. Okay, thank you. 14 A. Okay. 15 Q. Now, ultimately -- so when the subsequent bankruptcy 16 filing was made -- which it was; right? 17 A. Yes. 18 Q. The intention -- specific intention was indeed to 19 trump Article 9, Section 24 of the state constitution; 20 correct? 21 A. That wasn't the only intention. 22 Q. But that was an intention; was it not? 23 A. That was one of the objectives. 24 Q. Now, ultimately you did request authorization for the 25 governor to file; right?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Now, did you have discussions with the governor's 2 office or anyone on the governor's team leading up to 3 the request letter that you sent in? 4 MR. SHUMAKER: Objection to form. 5 A. Leading up to? 6 Q. Yeah, before. 7 A. Before that. I think there were discussions with the 8 treasurer and even the governor that if we weren't 9 making progress on negotiations, I might have to 10 submit the letter. 11 Q. Okay. And in those conversations was there any 12 mention of the impact that the bankruptcy filing might 13 have or was intended to have as regards the pension 14 benefits? 15 A. Probably, yes. 16 Q. And do you recall anything specific about that? 17 A. I -- um -- as I said, I had regular meetings of the 18 governor and his staff, we probably discussed this. I 19 don't recall a specific discussion. 20 Q. Do you recall telling the governor and his staff in 21 general that one of the purposes, I'm not saying the 22 only purpose, one of the purposes or intentions of the 23 Chapter 9 filing would be to allow you to cut back the 24 pension benefits? 25 A. Yeah, I don't want to give the misimpression that that</p>


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<p style="text-align: right;">Page 121</p> <p>1 could place contingencies on a Chapter 9 filing; 2 right? 3 A. Yes. 4 Q. And he goes on to say that federal law also contains 5 what he calls the most important contingency on the 6 Chapter 9 filing, that it be legally executable; 7 correct? 8 A. Yes, the letter speaks -- that's the language of the 9 letter. 10 Q. Did you agree with the governor's analysis here? 11 A. I -- do I agree? Yes, I mean, I agree that that's the 12 most important contingency that we get to, yes. 13 Q. Now, petition was filed -- the bankruptcy petition was 14 filed on July 18th, like at 4 in the afternoon, 4:05, 15 something like that? 16 A. That's what I was told. I don't know the specific 17 time. 18 Q. Now, in doing -- in making your bankruptcy filing, 19 were you intending to do something that was in 20 violation of state law? 21 MR. SHUMAKER: Objection, calls for legal 22 conclusion. 23 A. Here again, subject to all the discussions that we had 24 earlier today, I was intending to alev the City of a 25 very dire situation and provide it with the maximum</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. Did you make any inquiries of the State Attorney 2 General? 3 A. I know at some point -- and I'm going to be careful 4 here because as a state contractor, I want to be very 5 careful about whether or not the Attorney General also 6 is my counsel. I know at some point I met with the 7 Attorney General, but I don't recall when that was. I 8 don't recall if it was before or it was after the 9 filing. It might have been before. 10 Q. Okay. Well, if it was before, do you recall what 11 advice you got from the State Attorney General as to 12 whether it was legal under Michigan law for you to go 13 ahead with the bankruptcy filing but didn't protect 14 the pensions? 15 MR. SHUMAKER: Objection. I caution the 16 witness that to the extent it calls for 17 attorney-client communication, not to reveal those 18 communications. 19 A. I don't think I can answer the question without going 20 into attorney-client communications. 21 Q. But you don't recall specifically whether you actually 22 consulted the State Attorney General prior to the 23 filing; do you? 24 A. I recall meeting with the Attorney General at one -- I 25 may have had a couple -- I think I've had a couple of</p>
<p style="text-align: right;">Page 122</p> <p>1 ability to restructure itself. 2 MR. ULLMAN: I'm going to move to strike as 3 nonresponsive. Can you read back my question, please, 4 and can you answer it, Mr. Orr? 5 (Record read back as requested.) 6 A. No. 7 Q. And at this time were you aware that a bankruptcy 8 filing that would allow you to impair pension benefits 9 was at least arguably in violation of state law? 10 A. I was aware that various parties had taken that 11 position, yes. 12 Q. So you were aware there was an argument? I'm not 13 saying you were agreeing with it. 14 A. I didn't agree with it, but there was an argument. 15 Q. Now, did you give consideration to that argument? 16 A. Yes, I suppose I did. 17 Q. And what did you do to give consideration to that 18 argument? 19 A. I discussed it with counsel. 20 Q. Okay, which counsel? 21 A. My legal counsel. 22 Q. Legal counsel being? 23 A. Jones Day. 24 Q. Jones Day. 25 A. Uh-huh.</p>	<p style="text-align: right;">Page 124</p> <p>1 telephone conversations with him and I recall meeting 2 with him. I don't recall whether it was prior or 3 after the filing. I know from time to time -- I just 4 don't recall when it was. 5 Q. Would there have been any reason for you not to 6 consult the Attorney General prior to the bankruptcy 7 filing on that issue? 8 A. No, I think the State Attorney General made his 9 position known prior to the filing. 10 Q. Now, as of this time the petition was filed there were 11 various state court litigations that had been begun? 12 A. Yes. 13 Q. And those challenged, among other things, PA 436; 14 correct? 15 A. Yes. 16 Q. And its constitutionality? 17 A. Yes. 18 Q. And in fact, the petition was filed just prior to the 19 start of a TRO hearing in one of those state 20 litigations; wasn't it? 21 A. I was told that either that night or the following 22 day. 23 Q. And are you aware that certain objectors in this 24 proceeding have stated that the bankruptcy petition 25 was filed just before the judge in the case was about</p>

<p style="text-align: right;">Page 125</p> <p>1 to issue a TRO prohibiting the bankruptcy filing from 2 taking place? 3 A. I heard that after the fact, yes. 4 Q. And are you aware that these objectors have stated 5 that in fact the state lawyers asked for a short delay 6 before the ruling was issued so they could get the 7 bankruptcy filing in before the judge came down with a 8 TRO? 9 A. I don't know if I heard it -- I may have read that 10 later. I don't know if I heard it. 11 Q. Did you have any involvement in those actions? 12 A. No, no. 13 Q. Do you deny that that's what occurred? 14 A. I only know what I've heard and I have no personal 15 knowledge, I just know what I've heard and what I've 16 read. 17 Q. And isn't it correct that you wanted to get the 18 bankruptcy petition filed as soon as possible because 19 you knew there was a risk that the state might rule it 20 was illegal -- the state court might rule it was 21 illegal under state law for the bankruptcy proceeding 22 to be filed? 23 A. No, that wasn't the reason. 24 Q. Is there a particular reason that the bankruptcy 25 filing was made at 4:06 in the afternoon of the same</p>	<p style="text-align: right;">Page 127</p> <p>1 A. No. 2 Q. And you have not taken any steps to stop the 3 bankruptcy proceeding from going forward; have you? 4 A. No. 5 MR. ULLMAN: Would this be a good time to 6 stop for lunch, a quick lunch? 7 MR. SHUMAKER: Sure. 8 MR. ULLMAN: I'm ready to continue but I 9 know -- 10 THE WITNESS: You got another -- how much 11 -- do you have another line of inquiry? Whatever 12 everybody -- 13 MR. ULLMAN: I'm about to switch subject 14 matters. 15 THE VIDEOGRAPHER: Going off the record at 16 12:52 p.m. 17 (Luncheon recess between 18 12:52 p.m. and 1:30 p.m.) 19 THE VIDEOGRAPHER: We're back on the record 20 at 1:35 p.m. 21 BY MR. ULLMAN: 22 Q. Welcome back, Mr. Orr. 23 A. Good afternoon. 24 Q. One other question about the June 14th proposal. 25 Referring to page 98, we talked about the defined</p>
<p style="text-align: right;">Page 126</p> <p>1 day a TRO was being heard in the state court other 2 than to get the jump on the state court ruling? 3 MR. SHUMAKER: Object to the form. 4 A. Not to the best of my knowledge. 5 Q. Now, you're aware that the state court in that 6 litigation in fact later issued a ruling that PA 436 7 is unconstitutional to the extent that it authorizes a 8 proceeding under Chapter 9 in the way that could 9 threaten to impair or diminish accrued pension 10 benefits? 11 A. Yes, I was informed that there are I believe three 12 TROs after the bankruptcy filing. 13 Q. And you have proceeded with the bankruptcy petition 14 notwithstanding; correct? 15 A. Well, the bankruptcy petition had been filed. There 16 were open questions about the application of the stay. 17 There was also a question about an appeal, which was 18 taken up I believe by the Attorney General's office. 19 So when you say you proceeded with the petition, we 20 filed the petition, there was a ruling, and there were 21 appeals. 22 Q. Okay. And in light of the state court ruling that 23 PA 436 was unconstitutional, you did not take any 24 steps to withdraw the bankruptcy petition from filing; 25 did you?</p>	<p style="text-align: right;">Page 128</p> <p>1 contribution benefit plan? 2 A. Yes. 3 Q. Okay. Is it correct that under that plan 4 contributions are being made only for people who would 5 be current City employees? 6 A. Will the plan be closed? 7 Q. Yes. 8 A. Yes, I believe so. 9 Q. So under the restructuring plan there would be no 10 pension contributions made for retirees; correct? 11 A. I believe that's correct. 12 Q. Now, you I believe said that the June 14th proposal 13 was presented at a meeting to representatives of 14 various creditors, I think you said that in your 15 declaration? 16 A. On June 14th, yes. 17 Q. Okay. Did you speak at that meeting? 18 A. Yes. 19 Q. And who else spoke? 20 A. I believe all -- several members of our team, I 21 believe it was Mr. Heiman, David Heiman, I believe it 22 was Ken Buckfire, I believe Heather Lennox was on, I 23 believe Bruce Bennett was there, I believe Ken 24 Buckfire may have spoken. I'm trying to recall if 25 there was anyone else.</p>

<p>Page 129</p> <p>1 Q. And this meeting took about two hours total; is that 2 right? 3 A. Approximately that time. 4 Q. And you indicated in your -- the declaration that you 5 filed here that at the June 14th meeting you presented 6 the proposal and you presented the executive summary 7 and people got the full proposal as they exited and I 8 think you said that you answered questions posed by 9 the attendees? 10 A. I believe that's correct. 11 Q. Is that an accurate and truthful description of what 12 happened at the June 14th meeting? 13 A. Yes. 14 Q. There were no actual negotiations at that meeting; 15 were they? 16 A. I don't think that -- you know, be careful of the word 17 negotiations, but no, not as it's generally 18 understood. 19 Q. Now, the next meeting that I believe took place was on 20 June 20; is that right? 21 A. Are you reading through my declaration? 22 Q. Uh-huh. 23 A. Page 55 has a list of meetings, around that 24 approximate time. 25 Q. Uh-huh.</p>	<p>Page 131</p> <p>1 A. I'm going to defer as to whether or not those 2 constitute negotiations. There was a give and take is 3 my understanding, but I'm not going to testify that 4 those did not constitute negotiations. 5 Q. Well, was there any actual sit down, you know, and 6 bargaining as to what the City would agree to as an 7 alternative to what was put in the June 4th (sic) 8 proposal and what it would not? 9 A. Here again, let me be careful here. The obligation to 10 collectively bargain is suspended for five years so I 11 just want to state that for the record. We are not in 12 any way by answering this question seeking to waive 13 that right, as it is traditionally understood. That 14 being said, I think at those meetings and all the 15 meetings I've referenced we generally asked during 16 those meetings for proposals which could be 17 characterized as negotiations. 18 Q. Did the City make any counterproposals to the June 19 14th proposal at the June 20 meetings? 20 A. Well, we wouldn't bargain against ourselves. 21 Q. It's a yes or no question; okay? 22 A. Sir, throughout the day I'm trying to give you a 23 response. I know you want yes or no questions for 24 purposes of your briefing, I suppose, but I'm trying 25 to give you an accurate response.</p>
<p>Page 130</p> <p>1 A. Okay, yes. 2 Q. So the next one was June 20; is that right? 3 A. If that's what it says in my declaration, yes. 4 Q. And there were both morning and afternoon sessions; is 5 that right? 6 A. Yes. 7 Q. And this was six days after the proposal had been 8 presented; correct? 9 A. Yeah, I haven't done the counting, but 14th to 20th, 10 yeah, it would be six calendar days, yes. 11 Q. And it was a two-hour morning session and about 90 12 minutes for the afternoon session? 13 A. That sounds about right. 14 Q. And in your affidavit or your declaration you 15 indicated that at this meeting, these meetings, the 16 City presented a more in-depth look at its analysis of 17 the health and pension obligations and suggested for 18 proposals -- suggested proposals for the modification 19 thereof that the City could fund within its means 20 going forward and you provided handouts of the 21 presentations. Are those accurate descriptions of 22 what -- 23 A. Yes. 24 Q. So there were no actual negotiations at that meeting 25 either; were there?</p>	<p>Page 132</p> <p>1 Q. I would appreciate it if you could answer the question 2 without making speeches. 3 MR. ULLMAN: Can you have the question 4 read back, please? 5 THE WITNESS: It's not a speech, it's a 6 response. 7 MR. ULLMAN: Question read back. 8 (Record read back as requested.) 9 MR. SHUMAKER: Object to the form. 10 A. We didn't receive any counterproposals so there was 11 nothing to counter. 12 Q. And did you make any further mod -- did you make any 13 modifications on June 20 to the proposal you had made 14 on June 14th? 15 A. Here again, I'm going to be careful as to whether or 16 not what we discussed at the 20 referred to 17 modifications but suffice it to say we went over in 18 detail as I said in my declaration our proposal on the 19 14th and asked for responses. 20 Q. Okay. The next meeting I believe took place in July; 21 is that right? July 10th and 11th? 22 A. Yes, here again, if you're reading my declaration, 23 that's what I state. 24 Q. Now, in this set of meetings there were -- first of 25 all, were you present there?</p>

<p style="text-align: right;">Page 133</p> <p>1 A. I don't -- I don't recall which of those meetings. I 2 know I attended the 14th in person, I had my June 10th 3 meeting in person, and I know I attended one or some 4 of these other meetings, but I don't recall if I was 5 present at that meeting. 6 Q. Okay. So I take it then that you have no personal 7 recollection as you sit here now as to what happened 8 at those meetings? 9 A. No, only as reported to me by my staff or consultants. 10 Q. Okay. And so what is set out in your declaration that 11 you filed in the bankruptcy case regarding the July 12 10th and 11 meetings is essentially a recitation of 13 facts that were reported to you by others? 14 A. Yeah, my information and belief, yes. 15 Q. And so far as you were aware, the description of the 16 meetings that you put in your declaration were full 17 and complete and accurate? 18 MR. SHUMAKER: Object to the form. 19 A. Yes. 20 Q. And we're talking about the meetings for July 10th and 21 11th just to be clear? 22 A. Yes. 23 Q. Okay. 24 MR. ULLMAN: I'm going to show you a 25 document that we will mark as --</p>	<p style="text-align: right;">Page 135</p> <p>1 As of this time, has the City received any 2 specific proposals from any of the potentially 3 interested parties? 4 A. Not to the best of my knowledge. 5 Q. And the authors go on to say it would be productive if 6 the City could provide us with its specific proposals 7 on pension benefit restructuring as soon as possible. 8 We have had only two meetings -- I'm sorry, we have 9 had two meetings where the similar pension benefits 10 were addressed and still have only the general 11 observation that pension benefits must be reduced. 12 Is that a fair characterization as to the 13 status as of July 12th? 14 A. Well, I'm assuming that it's fair to say there were 15 two meetings. I'm not sure that they have the City's 16 general observation. My understanding was that there 17 were discussions besides the meetings and follow-up 18 regarding pension benefits, but that's to the best of 19 my knowledge. 20 Q. And they go on to say, sufficient -- we hope 21 sufficiently provide to our next meeting the City will 22 provide us with specific proposals on pension benefit 23 restructuring so that our meetings can be genuine, 24 good faith negotiations on the City's debt. 25 A. Yes, I see that.</p>
<p style="text-align: right;">Page 134</p> <p>1 THE COURT REPORTER: Eleven -- excuse me, 2 12. 3 THE WITNESS: Twelve. 4 MR. ULLMAN: Twelve. 5 (Marked Exhibit No. 12.) 6 Q. Exhibit 12 is a letter on the letterhead of the 7 Detroit Firefighters Association dated July 12, 2003 8 (sic) to Evan Miller and David Heiman of Jones Day. 9 A. Yes. 10 Q. Are you familiar with this letter? 11 A. I've seen this letter before, yes. 12 Q. Okay. And in this letter the authors refer to the 13 July 10 meeting and say that in the third paragraph 14 you stated you wish to discuss pension restructuring 15 proposals, you were then asked by the DPOA president, 16 Mark Diaz, for specific City pension restructuring 17 proposals -- I'm sorry, I think I omitted the word 18 benefit. For specific City benefit restructuring 19 proposals. You declined to give any specific 20 proposals. 21 As far as you're aware, is that an accurate 22 statement? 23 A. Yes. 24 Q. And they go on to say, we are reviewing and will 25 provide the City with specific proposals.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. And I think you indicated at this time the City had 2 not provided any specific proposals to these 3 gentlemen? 4 A. No. No, no, that's not what I indicated. 5 Q. Okay. 6 A. No, I think we did provide a proposal on June 14th and 7 I think the testimony was that we flushed those out 8 subsequently. 9 Q. So the only proposal that had been provided so far is 10 a proposal on June 14th and nothing beyond that? 11 MR. SHUMAKER: Object to the form. 12 A. No, I think we said that there were other discussions; 13 in fact, you said based upon my declaration that there 14 were further discussions that followed up after June 15 14th. 16 Q. Maybe I was unclear in my question. 17 A. Okay. 18 Q. There were no proposals that had been put out by the 19 City subsequent to the June 14th proposal; correct? 20 THE WITNESS: I guess someone was on the 21 call. Are we okay? 22 A. No proposals put out by -- well, you keep saying 23 proposals. There's nothing as comprehensive that was 24 proposed as we put on June 14th. There was additional 25 data and additional information that was provided</p>



<p style="text-align: right;">Page 137</p> <p>1 after June 14th.</p> <p>2 Q. So we're clear, no additional proposals that provided</p> <p>3 for the pension cuts or the health benefit cuts in a</p> <p>4 way that was different from what was in substance set</p> <p>5 out on June 14?</p> <p>6 A. Well, you say what was different.</p> <p>7 Q. You haven't changed what was set out in the June 14th</p> <p>8 proposal; have you?</p> <p>9 A. You're not letting me respond. Can I respond?</p> <p>10 Q. Let me withdraw the question.</p> <p>11 A. Okay.</p> <p>12 Q. Had there been any modifications to the June 14</p> <p>13 proposal as of July 12, 2003 -- '13?</p> <p>14 MR. SHUMAKER: Object to the form.</p> <p>15 A. There could have been discussions that could qualify</p> <p>16 as modifications, but generally speaking, the broad</p> <p>17 outline of the proposal we submitted on June 14th was</p> <p>18 still the proposal that we were talking about.</p> <p>19 Q. Okay, and what were the discussions that you were</p> <p>20 referring to that you said could qualify as</p> <p>21 modifications?</p> <p>22 A. Discussions we had with all members at the due</p> <p>23 diligence follow-up sessions where we requested their</p> <p>24 input.</p> <p>25 Q. And was there any bargaining that took place at those</p>	<p style="text-align: right;">Page 139</p> <p>1 underfunding and then tackle contributions and</p> <p>2 attendant benefit changes. Do you see that?</p> <p>3 A. Yes, it speaks for itself.</p> <p>4 Q. And was that the position of the City as of July 17,</p> <p>5 2013?</p> <p>6 A. Yes, we said that before.</p> <p>7 Q. As of July 17th now, 2013, had the City presented any</p> <p>8 proposals that were different from the proposals set</p> <p>9 out in the June 14th document?</p> <p>10 A. As I said previously, subject to that testimony about</p> <p>11 discussions that were had at these meetings, I think</p> <p>12 this letter speaks for itself. We were requesting</p> <p>13 input from the various interested parties as far as</p> <p>14 our June 14th proposal.</p> <p>15 Q. And the discussions were the same ones that you</p> <p>16 answered about in the very last question --</p> <p>17 A. Yes.</p> <p>18 Q. -- when I asked you what the discussions were?</p> <p>19 A. Yes.</p> <p>20 Q. And as of June 17th -- I'm sorry, July 17th, had the</p> <p>21 City actually sat down with any union or retiree</p> <p>22 association to attempt to reach an agreement on a</p> <p>23 restructuring plan that had terms that were different</p> <p>24 from the terms in the June 14th proposal?</p> <p>25 A. July 17th?</p>
<p style="text-align: right;">Page 138</p> <p>1 sessions where the City said it would be willing to</p> <p>2 agree to something that was different from what was in</p> <p>3 June 14?</p> <p>4 A. Here again, I'm going to stay away from bargaining as</p> <p>5 a legal conclusion, duty to bargain is suspended. I</p> <p>6 will say there was a back and forth and my</p> <p>7 understanding discussions and invitations for further</p> <p>8 information.</p> <p>9 Q. Thank you.</p> <p>10 I'm going to show you the next document,</p> <p>11 which is a response to the one that we have as Exhibit</p> <p>12 12, which we'll mark as Exhibit 13.</p> <p>13 (Marked Exhibit No. 13.)</p> <p>14 Q. Exhibit 13 a letter from Jones Day in response to what</p> <p>15 we have marked as Exhibit 12; do you see that?</p> <p>16 A. Yes, I believe so.</p> <p>17 Q. And you see this is -- the letter starts out by</p> <p>18 thanking the authors for their letter of July 12th?</p> <p>19 A. Yes.</p> <p>20 Q. And then in the second paragraph Jones Day goes on to</p> <p>21 say, consistent with the position Dave Heiman and I</p> <p>22 expressed at the meeting, we still think it makes</p> <p>23 sense to first try to reach common ground with key</p> <p>24 unions and association leaders on actuarial</p> <p>25 assumptions and methods and the amount of PFRS</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. I'm sorry, yes.</p> <p>2 A. Yes.</p> <p>3 Q. If I misspoke, I'm asking as of July 17th.</p> <p>4 A. Yes, we may have.</p> <p>5 Q. You say you may have. Did you?</p> <p>6 A. I was aware that there were ongoing confidential</p> <p>7 negotiations with at least one union --</p> <p>8 Q. Okay.</p> <p>9 A. -- about a proposal.</p> <p>10 Q. Okay. Were you present during those negotiations --</p> <p>11 those discussions?</p> <p>12 A. I have -- I have not -- I have met with members'</p> <p>13 representatives of those unions. I'm not sure I was</p> <p>14 in on all negotiations.</p> <p>15 Q. Are these discussions that the City has stated are</p> <p>16 subject to privilege under Federal Rule of Evidence</p> <p>17 408?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And other -- so will you tell me what was said</p> <p>20 at those sessions?</p> <p>21 MR. SHUMAKER: Objection to the extent it</p> <p>22 calls you to reveal privileged communications.</p> <p>23 A. Yeah, those discussions are ongoing and so I'm -- I</p> <p>24 have to be a little circumspect. Suffice it to say</p> <p>25 there were discussions along the line of this exchange</p>

<p style="text-align: right;">Page 141</p> <p>1 of letters of what could be addressed based upon our</p> <p>2 June 14th proposal.</p> <p>3 Q. Okay. And with whom were those discussions? Which</p> <p>4 groups? You said you met with one or two groups or</p> <p>5 you were aware of meetings with one or two groups.</p> <p>6 A. I think those are confidential, because as I said,</p> <p>7 those discussions are ongoing, so I don't want to</p> <p>8 interfere with settlement negotiations or breach</p> <p>9 confidentiality so I'm reluctant to answer your</p> <p>10 question.</p> <p>11 Q. Okay, well, will you answer my question or will you</p> <p>12 not?</p> <p>13 A. I don't think I can. I think they're supposed to be</p> <p>14 confidential.</p> <p>15 Q. Well, you know, you have to answer the question unless</p> <p>16 your counsel instructs you not to.</p> <p>17 MR. SHUMAKER: If you think it's going to</p> <p>18 reveal privileged communications, I'm going to</p> <p>19 instruct you not to answer.</p> <p>20 THE WITNESS: I'll be -- I don't know so</p> <p>21 much -- can I consult with my counsel?</p> <p>22 MR. ULLMAN: Yes.</p> <p>23 THE WITNESS: Can we go off the record?</p> <p>24 MR. ULLMAN: Yes.</p> <p>25 THE WITNESS: Let's step out.</p>	<p style="text-align: right;">Page 143</p> <p>1 saying June.</p> <p>2 A. July.</p> <p>3 Q. As of July 17th, you had not received any actual</p> <p>4 proposal outside possibly with the settlement</p> <p>5 discussions you were talking about from any union or</p> <p>6 retiree association; is that right?</p> <p>7 A. Outside of those settlement negotiations --</p> <p>8 Q. Yes.</p> <p>9 A. -- that is correct.</p> <p>10 Q. Now, as of July 17, had the City told any union or</p> <p>11 retiree association that it would in fact be willing</p> <p>12 to proceed with the restructuring on terms that did</p> <p>13 not include the elimination of ongoing pension</p> <p>14 contributions for retirees?</p> <p>15 A. When you mean the City, you mean all of my consultants</p> <p>16 and others; correct?</p> <p>17 Q. Yes.</p> <p>18 A. There may have been discussions in that regard. I</p> <p>19 think I recall hearing that there was -- I can't</p> <p>20 recall a specific meeting, a discussion about how that</p> <p>21 would be arranged, but I'm not sure.</p> <p>22 Q. So you personally did not make any such statement; did</p> <p>23 you?</p> <p>24 A. Statement about?</p> <p>25 Q. Saying to anyone -- to any union or retiree</p>
<p style="text-align: right;">Page 142</p> <p>1 THE VIDEOGRAPHER: Going off the record at</p> <p>2 1:53 p.m.</p> <p>3 (A brief recess was taken.)</p> <p>4 THE VIDEOGRAPHER: We're back on the record</p> <p>5 at 1:57 p.m.</p> <p>6 BY MR. ULLMAN:</p> <p>7 Q. Okay, will you answer my question, Mr. Orr?</p> <p>8 A. No, I think this is -- concerns commercially sensitive</p> <p>9 potentially confidential settlement negotiations and</p> <p>10 implicates the attorney-client privilege so I cannot</p> <p>11 answer your question.</p> <p>12 Q. Okay, so apart from the discussions that you won't</p> <p>13 tell me about, would the City actually sit down with</p> <p>14 any union or retiree association in an attempt to</p> <p>15 reach an agreement on a structuring plan on terms that</p> <p>16 are different than the terms set out in the June 14th</p> <p>17 proposal as of July 17th?</p> <p>18 A. As I said before, subject to the meetings we've had,</p> <p>19 we've exchanged information which may constitute the</p> <p>20 type of sit down you're talking about. Other than the</p> <p>21 ones that have been recounted and phone calls and</p> <p>22 meetings I may not be aware of, this is what I know in</p> <p>23 my declaration.</p> <p>24 Q. And as of June 17th then, I take it you had not</p> <p>25 received any actual proposal -- I'm sorry, I keep</p>	<p style="text-align: right;">Page 144</p> <p>1 association that the City would in fact be willing to</p> <p>2 agree to a restructuring that did not involve the</p> <p>3 elimination of ongoing pension contributions for</p> <p>4 retirees.</p> <p>5 A. No, I didn't say that.</p> <p>6 Q. And do you know in fact whether anyone working on your</p> <p>7 team ever said that to any union or retiree</p> <p>8 association?</p> <p>9 A. No.</p> <p>10 Q. Okay. During the time from June 14th to July 17, did</p> <p>11 you or anyone else from your team tell any union or</p> <p>12 retiree association that the City acknowledged that</p> <p>13 under Michigan law pension rights were explicitly</p> <p>14 protected from being impaired or diminished?</p> <p>15 A. I don't --</p> <p>16 MR. SHUMAKER: Objection, form, calls for</p> <p>17 speculation.</p> <p>18 A. I don't recall anyone saying that, but it may have</p> <p>19 happened.</p> <p>20 Q. But you personally didn't make that statement; did</p> <p>21 you?</p> <p>22 A. I don't recall saying that. I may -- you know,</p> <p>23 anything is possible, I just don't recall saying it.</p> <p>24 Q. And as of July 17, had the City, you or anyone working</p> <p>25 for you, told any union or retiree association that it</p>

<p style="text-align: right;">Page 145</p> <p>1 would in fact be willing to agree to a restructuring 2 plan that did not effectively eliminate the prior 3 existing health benefits for retirees? 4 MR. SHUMAKER: Objection, foundation, calls 5 for legal speculation. 6 A. Healthcare benefit for retirees? 7 Q. Yeah. 8 A. That did not eliminate it? 9 Q. Yeah, that you -- 10 A. Did not adjust it in some fashion? 11 Q. Did not essentially cut it out the way it was being 12 cut out in the June 14th proposal. 13 A. Yeah, I want to be careful with the frame cut out, 14 because I think there were subsequent discussions 15 about what would be provided instead -- 16 Q. Uh-huh. 17 A. -- as a proposal, so I don't want my testimony to seem 18 as if we were not proposing an alternative to the 19 existing healthcare plan and that had not been 20 discussed prior to July 17th, but subject to those 21 qualifications the answer to your question is yes. 22 Q. Now, I've been asking you as of July 17 and then the 23 bankruptcy filing was the very next day; correct? 24 A. Yes. 25 Q. Now, in your declaration do you recall making</p>	<p style="text-align: right;">Page 147</p> <p>1 A. Yeah, I don't think that was just a function of press 2 reports, I think that was relayed to me upon my 3 information and belief by others as well. 4 Q. Upon your information and belief sounds like you 5 didn't hear it personally? 6 A. No, I just don't recall whether I heard it personally. 7 I have heard it personally in other meetings from 8 union representatives prior to July 17th, sure. 9 Q. With respect to the statements that you quote in the 10 newspaper, those are just newspaper reports; right? 11 A. Well, if they're newspaper -- they speak for 12 themselves if they're newspaper reports, but have I 13 heard that from union representatives? 14 Q. I'm -- 15 A. I'm responding to your question. Have I heard that 16 from union representative? Yes. 17 Q. I'm going to get these in two phases; okay? 18 A. Okay. 19 Q. For the newspaper reports, you're relying on what was 20 said in the newspaper? 21 A. Yes. 22 Q. So you have no personal knowledge as to whether the 23 quotation in the newspaper was accurate or anything 24 like that? 25 A. Unless I was there, I'm not the reporter, yes.</p>
<p style="text-align: right;">Page 146</p> <p>1 statements to the effect that there were expressions 2 by certain union representatives that they would not, 3 and I quote, countenance discussions over proposals to 4 modify either retiree healthcare or pensions? 5 A. Yes, I think those are quite publicly stated. 6 Q. And you refer in your declaration to newspaper reports 7 from June 20 and 21? 8 A. Yes, and I'm trying to recall if people said that to 9 me personally as well. Yes, but I do recall the press 10 reports, yes. 11 Q. And those are in fact press reports that you referred 12 to as you said? 13 A. Yeah, but I think -- and I'm just -- was your question 14 asked about union representatives or union members? 15 Q. Union representatives. 16 A. Could that include members? 17 Q. I'm not asking about people who are just members and 18 not officials in the union. 19 A. So you're talking about union officials? 20 Q. Union officials. 21 A. Okay. That they would not countenance any change 22 to -- 23 Q. I think the language from your declaration is that 24 they would not countenance discussions over proposals 25 to modify either retiree healthcare or pensions.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Now, what statements were made to you outside of what 2 you read in the newspaper? 3 A. Quite early on I had heard from union representatives, 4 I believe at DFFA, DPLSA, DPOA, I'm not sure it 5 includes AFSCME, UAW, but I had heard statements in 6 that regard in many of the meetings that I've had with 7 them previously prior to July 17th. 8 Q. And did they specifically -- what statements, saying 9 specifically what? 10 A. Generally -- you know, I don't know the exact quotes, 11 but generally speaking what I said. They would not 12 countenance cuts to healthcare and benefits. 13 Q. That wasn't actually what you said in your 14 declaration. 15 A. That's what I said generally. 16 Q. What you said in your declaration is they would not 17 countenance discussions over proposals to modify 18 either retiree healthcare or pensions. 19 A. Yeah, healthcare, okay, yes. 20 Q. So who said what -- I would like to know specific as 21 to who said what to you when? 22 A. As I said, I had meetings early on with DFFA, I don't 23 recall the specific members, but I recall the meeting, 24 they were quite heated. Might have been one with 25 Mr. McNamara, Mr. Shinsky and others. I've had many</p>



<p style="text-align: right;">Page 149</p> <p>1 meetings with DPLSA, Rodney Sizemore and Mark Young. 2 I've had meetings with DPOA, Mark Diaz, where that was 3 said prior to July 17th. 4 Q. Okay. And you're aware that the -- at least two of 5 the individuals that you mentioned are signatories to 6 what we've marked as Exhibit 12? 7 A. Yes. 8 Q. So you're not suggesting, are you, that those people 9 were saying that their unions would not in any event 10 negotiate with the City; were you? 11 A. I didn't -- that's not my testimony. That's what I 12 say in my declaration. I think most of the 13 discussions that were had were, here again, staying 14 away from the traditional concept of negotiating 15 because I'm not waiving any rights, but the general 16 concern is we're not going to change pension and 17 healthcare benefits, there were a lot of discussions, 18 these are affecting people's lives, these are promises 19 that the City has made, all the things you've heard 20 before. Those were recounted to me many times. 21 Q. Okay. And as we saw from the document we've marked as 22 Exhibit 12, the DFFA was in fact interested in getting 23 specific proposals from the City and said it would be 24 making its own proposal; correct? 25 MR. SHUMAKER: Objection, calls for</p>	<p style="text-align: right;">Page 151</p> <p>1 on with -- 2 Q. The Police and Fire? 3 A. Yes. 4 Q. And what was the substance of those discussions? 5 A. This was concerns expressed about potential impact to 6 pensions and healthcare obligations. 7 Q. And are you aware that the police and firefighters 8 association, RDPP -- I'm sorry, RDPFFA, that's who 9 you're referring to? 10 A. Right, RDPFFA, yes. 11 Q. Retired Detroit Police and Firefighters Association, 12 they represent retired police and firefighters; 13 correct? 14 A. Yes. I assume. That's their name, yeah. 15 Q. Did anyone from that organization tell you that they 16 were refusing to negotiate with the City? 17 A. No, I don't think the discussion was of that nature 18 and character about refusing to negotiate. I think it 19 was quite -- by some members of that meeting made 20 quite clear that they were not interested -- refusing 21 is a big word. It was made quite clear they were not 22 interested in hearing about adjustments to pension 23 benefits. 24 Q. But you're not saying that that organization said it 25 refused to negotiate with the City; are you?</p>
<p style="text-align: right;">Page 150</p> <p>1 speculation. 2 A. The letter speaks for itself, but it says it would be 3 productive if the City could provide us with specific 4 proposals on pension benefit restructuring as soon as 5 possible. I think that there had been discussions in 6 some of those meetings about pension benefits, but I 7 guess they're asking for more detailed information. 8 Q. And it also says as we went through before in the 9 fourth paragraph, we are reviewing and will provide 10 the City with specific proposals; correct? 11 A. Yeah, that's the information I got and they said they 12 were going to provide us with specific proposals. 13 Q. Okay. And -- okay. 14 And then we saw the response to that was in 15 Exhibit 13 again; correct? 16 A. Yes, this is the given for the discussions I talked 17 about. 18 Q. And then the bankruptcy filing was the very next day; 19 correct? 20 A. Yes. 21 Q. Did you personally have any discussions with 22 representatives of any retiree associations? 23 A. Yes. 24 Q. Which ones? 25 A. Fire, Detroit -- Police and Fire I think, yes. Early</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Like I said, refused is a big word. There was a lot 2 of stridency in the conversations. 3 Q. But to be clear, your testimony is not that the 4 retiree association for the police and firefighters 5 said that they would refuse to enter into any 6 negotiations with the City? 7 A. No, I keep saying it's not a question of refusing, it 8 was that you can't do this. So they didn't say and 9 we're not going to ever talk to you again. That did 10 not occur. What was was very strident about you can't 11 do this. 12 Q. And you could understand why they were strident about 13 what was being done to their retirement benefits; 14 can't you? 15 A. Well, nothing's been done to their retirement 16 benefits. We've held them harmless for the balance of 17 this entire year. There was a proposal. 18 Q. You can understand about the retirees would be upset 19 about what was proposing to be done; can't you? 20 A. I've said that before, sure. 21 Q. I want to show you another document. Was that the 22 only retiree association you had discussions with? 23 Any discussions with the Detroit Retired City 24 Employees Association? 25 A. I'm trying to think. None that I recall. None that I</p>



<p style="text-align: right;">Page 153</p> <p>1 recall.</p> <p>2 Q. Okay. Let me show you another document.</p> <p>3 A. There may -- none that I recall with specificity.</p> <p>4 Q. Okay. And you were aware that they represented other</p> <p>5 nonuniformed retirees?</p> <p>6 A. Yes.</p> <p>7 Q. But you can't recall anything --</p> <p>8 A. None I recall with specificity.</p> <p>9 MR. ULLMAN: Okay. Let's mark the next</p> <p>10 document, which is, what, 15?</p> <p>11 THE COURT REPORTER: Fourteen.</p> <p>12 MR. ULLMAN: Fourteen.</p> <p>13 (Marked Exhibit No. 14.)</p> <p>14 Q. Okay, 14 is a document entitled retiree legacy cost</p> <p>15 restructuring, September 11, 2013.</p> <p>16 A. Yes.</p> <p>17 Q. Are you familiar with this document?</p> <p>18 A. Yes.</p> <p>19 Q. And does this represent the City's current position as</p> <p>20 to what it's going to do, what it's going to provide</p> <p>21 for retirees?</p> <p>22 A. This represents the slide deck that we proposed last</p> <p>23 week at the initial meeting with the retiree</p> <p>24 committee.</p> <p>25 Q. Okay, and does it represent the position for the City</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. And on the pension side of things has there been any</p> <p>2 change from what was set out in the June 14th</p> <p>3 proposal? As I understand this, it's still a defined</p> <p>4 contribution plan for current employees and no</p> <p>5 contributions being made by the City for retired --</p> <p>6 for retirees; is that right?</p> <p>7 MR. SHUMAKER: Object to the form.</p> <p>8 A. Yeah, the general consensus is that you would close</p> <p>9 the plan and there would be contributions for</p> <p>10 currents, yes.</p> <p>11 Q. And so again, just to be clear, that means for</p> <p>12 retirees no ongoing contributions provided by the</p> <p>13 City?</p> <p>14 A. None other than their participation in the note that's</p> <p>15 proposed in the June 14th proposal.</p> <p>16 Q. And with no new funding for their pensions the</p> <p>17 payments will stop -- to the retirees would stop being</p> <p>18 made when the retirement funds run out; is that right?</p> <p>19 A. That's a loaded question. I mean, the -- and the</p> <p>20 reason I say it's a loaded question, some of the</p> <p>21 retirement funds have said their payments won't run</p> <p>22 out so that's why we want to have a dialogue. We</p> <p>23 think they're at risk. They've told us they're not.</p> <p>24 Q. And by the City's estimation the pension funding will</p> <p>25 run out when? If no new funds are put in?</p>
<p style="text-align: right;">Page 154</p> <p>1 currently as to what it's --</p> <p>2 A. Yes, this is the current --</p> <p>3 Q. -- planning to propose or planning to put through?</p> <p>4 A. Yes, this is the City's current thinking.</p> <p>5 Q. And as I understand this roughly, on the health side</p> <p>6 what the City was saying it will do is essentially the</p> <p>7 retirees who are Medicare qualified can sign up for</p> <p>8 some various Medicare plans and the City will help</p> <p>9 them with the payment of the premium for that?</p> <p>10 A. Yes.</p> <p>11 MR. SHUMAKER: Objection, document speaks</p> <p>12 for itself.</p> <p>13 A. But yeah, on page 4 it starts that discussion, yes.</p> <p>14 Q. Okay. And essentially for nonMedicare retirees in</p> <p>15 terms of getting healthcare, they're on their own and</p> <p>16 the City says it will give them \$125 stipend; is that</p> <p>17 right?</p> <p>18 MR. SHUMAKER: Objection to form.</p> <p>19 A. Yeah, you say they're on their own, but I think</p> <p>20 there's a proposal here that they be able to go onto</p> <p>21 the exchanges provided by the Affordable Care Act and</p> <p>22 the City would give them a stipend.</p> <p>23 Q. Right, and that's if to the extent they can do it, but</p> <p>24 it's up to them to do something like that; right?</p> <p>25 A. Yeah, like Harris Teeter did last week, yes.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Well, as you can see from our proposal, we have -- not</p> <p>2 so much from the proposal but June 14th as well, we</p> <p>3 made certain assumptions as to when the funds might</p> <p>4 run out if nothing is adjusted one way or the other.</p> <p>5 We've been told that we're wrong so --</p> <p>6 Q. I'm asking. I'm asking the City's point of view.</p> <p>7 A. The City's point of view is that we've made an</p> <p>8 accurate and fair assumption that the funds will run</p> <p>9 out at some point within the next two decades.</p> <p>10 Q. And that's if no new money is contributed?</p> <p>11 A. If -- well, and I'm being very careful. It's not just</p> <p>12 if there's no new money, it depends upon actuarial</p> <p>13 rates, it depends upon rate of return. Pensions could</p> <p>14 invest in the Microsoft of their day and have more</p> <p>15 than enough funds for the foreseeable future. But</p> <p>16 assuming certainly reasonable assumptions that is the</p> <p>17 conclusion of the City.</p> <p>18 Q. And just to be clear, and that assumption as to when</p> <p>19 it would run out assumes no further contributions by</p> <p>20 the City; correct?</p> <p>21 A. Yes, it assumes we close the plan. Other than the</p> <p>22 note.</p> <p>23 Q. And do you have any more specific recollection as to</p> <p>24 when the funds would run out other than within the</p> <p>25 next two decades?</p>



<p style="text-align: right;">Page 157</p> <p>1 A. It's in my papers. If you want to point me to it, 2 that's fine, but I'll stand by what's in the papers. 3 Q. Now, you recall of course putting in a declaration in 4 the bankruptcy? 5 A. Yes. 6 Q. I guess I can actually give you a copy in case you 7 want to refer to it. 8 A. Okay. 9 MR. ULLMAN: Which we'll mark as 15. 10 (Marked Exhibit No. 15.) 11 Q. Okay, and Exhibit 15 is your declaration? 12 A. Yes. 13 Q. There's a lot of financial information that you put 14 out in your declaration; right? 15 A. Yes. 16 Q. One thing I didn't see in here is a balance sheet 17 showing the assets and liabilities of the City. 18 A. That is correct. 19 Q. Does one exist? 20 A. Not in the traditional sense that you're speaking of. 21 I think in our June 14th proposal we try to provide -- 22 and in other proposals we try to provide for some 23 listing of the City's potential assets of any 24 substantial form. But is their traditional corporate 25 balance sheet, for instance, for the City, no, not</p>	<p style="text-align: right;">Page 159</p> <p>1 you make a number of statements about insolvency? 2 MR. SHUMAKER: What page? 3 MR. ULLMAN: Sure, it's 37. 4 A. Yes. 5 Q. And in particular you cite a lot of figures with 6 respect to cash flow and you give projections? 7 A. Yes. 8 Q. Now, I think you indicated you're not an accountant? 9 A. No, I'm not. 10 Q. And is it correct that you yourself did not prepare 11 the cash flow numbers and projections? 12 A. That is correct. 13 Q. The underlying work was done by others? 14 A. Yes. 15 Q. And in your declaration you cite a number of sources 16 for the figures that you give in paragraphs 54 through 17 57? 18 A. Yes. 19 Q. You don't cite Ernst & Young as one of the sources? 20 A. No, that's because Ernst & Young submitted a parallel 21 affidavit at the time of this filing of Gaurav 22 Malhotra. 23 Q. Didn't the City in fact retain Ernst & Young to 24 prepare these cash flow projections? 25 A. The City retained Ernst & Young I believe over two</p>
<p style="text-align: right;">Page 158</p> <p>1 yet. 2 Q. Do you have schedules of assets and liabilities that 3 exist, though? 4 A. Yes, yes. 5 Q. Have those been produced? 6 A. I don't know if we've completed the schedules so -- 7 you're talking about the schedules of assets and 8 liabilities? I don't know. 9 MR. ULLMAN: I'll call for their 10 production. 11 MR. SHUMAKER: We will see. 12 MR. ULLMAN: I'm sorry? 13 MR. SHUMAKER: We'll look into it. I'm not 14 sure whether they've been produced or not right now as 15 I sit here. 16 A. Well, just to be clear, as you know, under Chapter 9 17 the time frame of it -- 18 Q. That wasn't my question. 19 A. But I'm answering your question so it won't be unclear 20 on the record. 21 Q. But there isn't a question. 22 A. No, I'm being responsive. So it won't be unclear on 23 the record. Under Chapter 9 they're actually not due 24 yet, so let's just be clear. 25 Q. Now, at paragraphs 52 through 57 of your declaration</p>	<p style="text-align: right;">Page 160</p> <p>1 years ago to work on liquidity, cash flow and 2 analysis. I don't think it was limited to just cash 3 flow projections. 4 Q. But that's one of the things that Ernst & Young did? 5 A. Yes. 6 Q. And that's one of the things in fact that -- what's 7 his name -- Gaurav Malhotra did? 8 A. Gaurav Malhotra. 9 Q. I'm sorry. 10 A. No problem. 11 Q. And Mr. Malhotra was in fact one of the lead Ernst & 12 Young players involved in working with the City; 13 wasn't he? 14 A. Yes, he's a principal at Ernst & Young. 15 Q. And is it correct that the figures that you're citing 16 in these paragraphs of your declaration in fact come 17 from work that come from Mr. Malhotra? 18 MR. SHUMAKER: Which figures are we talking 19 about, counsel? 20 MR. ULLMAN: Basically by my recollection 21 all of -- pretty much all of the figures. Certainly 22 in 54 these numbers about the 225 million, the 23 schedule that appears on page 39, the information 24 about the retiree legacy obligations being 8 percent 25 of revenues and this was all -- and going on, I just</p>

<p style="text-align: right;">Page 161</p> <p>1 tried to chart it out briefly. It looked to me</p> <p>2 basically all this was taken or appeared also in the</p> <p>3 affidavit or declaration of Mr. Malhotra.</p> <p>4 MR. SHUMAKER: I object to all this.</p> <p>5 That's why I'm trying to ask you to be specific so</p> <p>6 that the witness can give a responsive answer.</p> <p>7 A. Yeah, let me say --</p> <p>8 MR. SHUMAKER: Paragraphs 54 through what?</p> <p>9 MR. ULLMAN: Fifty-seven.</p> <p>10 THE WITNESS: Fifty-seven.</p> <p>11 MR. SHUMAKER: Through 57.</p> <p>12 A. Let me say this generally. If you look at Gaurav</p> <p>13 Malhotra's declaration, he states that this</p> <p>14 information is compiled by him in conversations with</p> <p>15 City employees and other consultants as well. So I</p> <p>16 don't want to give the impression that he's the sole</p> <p>17 source for the data that we recovered. It is a</p> <p>18 compilation of data from a number of different sources</p> <p>19 and I relied on those same sources too and as this is</p> <p>20 reported in the various footnotes to source the</p> <p>21 material, they may have come from Mr. Malhotra but</p> <p>22 they may have come from a number of different sources</p> <p>23 in the process of him developing the work.</p> <p>24 Q. But either way they were not done by you personally?</p> <p>25 A. No, they were not done by me personally.</p>	<p style="text-align: right;">Page 163</p> <p>1 you got there Detroit was subject to various scandals</p> <p>2 including financial mismanagement?</p> <p>3 A. Yes.</p> <p>4 Q. And one of the former mayors in fact went to jail for</p> <p>5 corruption; isn't that right?</p> <p>6 A. He's been convicted. I don't know if he's sentenced,</p> <p>7 but certainly that's been widely written about.</p> <p>8 Q. Right. And do you know whether the books and records</p> <p>9 that survived that administration were complete and</p> <p>10 accurate?</p> <p>11 A. I know that the, for instance, the CAFR, Consolidated</p> <p>12 Annual Financial Report, was based on certain books</p> <p>13 and records. I know that there have been questions</p> <p>14 raised about the quality and competence of Detroit's</p> <p>15 books and records. My testimony would be that to the</p> <p>16 best extent possible based upon the data that we got</p> <p>17 we relied on those books and records.</p> <p>18 Q. And is it correct that the books and records -- and</p> <p>19 those were the same books and records that</p> <p>20 Mr. Malhotra relied on; right?</p> <p>21 A. Yes, I think --</p> <p>22 MR. SHUMAKER: Objection, calls for</p> <p>23 speculation.</p> <p>24 A. I think Mr. Malhotra's declaration states that Ernst &</p> <p>25 Young did not audit the books and records of the City.</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Did you do anything to verify the numbers, the</p> <p>2 figures, the calculations done in paragraphs 52</p> <p>3 through 57 of your declaration were accurate?</p> <p>4 A. Yes.</p> <p>5 Q. What did you do?</p> <p>6 A. I discussed them with Mr. Malhotra and a number of</p> <p>7 different consultants. We discussed them with the</p> <p>8 economists at Ernst & Young and other accountants. I</p> <p>9 discussed some of them with City employees.</p> <p>10 Q. Okay, so you essentially satisfied yourselves that the</p> <p>11 people who prepared these numbers did what they were</p> <p>12 supposed to do and made what you thought were</p> <p>13 reasonable assumptions in coming to them; is that</p> <p>14 fair?</p> <p>15 A. Yes. I mean, some of them are just factual</p> <p>16 statements, but yes, to the extent there were</p> <p>17 assumptions and work being done, there was some</p> <p>18 participation in the organic work.</p> <p>19 Q. Okay, and you relied on the information that was being</p> <p>20 provided to you?</p> <p>21 A. Yes, by the professionals.</p> <p>22 Q. By the people -- by the professionals you hired to</p> <p>23 perform that task?</p> <p>24 A. Yes.</p> <p>25 Q. Now, is it correct that in the years prior to the time</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. And did anyone else audit the books and records of the</p> <p>2 City before these numbers that appear in your</p> <p>3 declaration were prepared?</p> <p>4 A. There may have been. I'm not sure, because depending</p> <p>5 upon at any given time where the numbers come from</p> <p>6 they may have been subject to an audit or they may</p> <p>7 have been subject to a review, for instance the</p> <p>8 pension numbers. Gabriel Rotor, which was GRS's</p> <p>9 traditional actuary, may have done some balance. So</p> <p>10 in my understanding based upon both the information I</p> <p>11 received and discussion from Malhotra's declaration,</p> <p>12 Ernst & Young did not audit them and I'm not an</p> <p>13 auditor so that's my understanding.</p> <p>14 Q. But do you know whether or not anyone else audited --</p> <p>15 A. I don't know.</p> <p>16 Q. And is it correct that if the underlying data of the</p> <p>17 books and records that were being used to prepare</p> <p>18 these cash flow numbers and projections have material</p> <p>19 inaccuracies, that those would affect the projections</p> <p>20 and the figures as well?</p> <p>21 MR. SHUMAKER: Object to the form.</p> <p>22 A. That's a hypothetical, but I think it's fair to say</p> <p>23 that if they had material inaccuracies, they would</p> <p>24 have an impact, but I'm unaware that they are</p> <p>25 materially inaccurate.</p>



<p style="text-align: right;">Page 165</p> <p>1 Q. But that's never been subject to an audit; has it?</p> <p>2 A. To the best of my knowledge I don't know when they</p> <p>3 have or when they haven't.</p> <p>4 Q. Okay. And I think you indicated that in coming up</p> <p>5 with these figures various people were consulted in</p> <p>6 various fields and a number of assumptions were made;</p> <p>7 is that right?</p> <p>8 A. I believe so.</p> <p>9 Q. And I think you also indicated in your structuring</p> <p>10 proposal from June 14th that the numbers are subject</p> <p>11 to various assumptions which could or could not prove</p> <p>12 right; correct?</p> <p>13 A. Well, I think in June 14th we've said that it's a</p> <p>14 proposal and there may be various issues that may or</p> <p>15 may not be correct.</p> <p>16 Q. Yeah. Okay, and obviously if any of the assumptions</p> <p>17 that went into the underlying numbers that appear in</p> <p>18 your declaration are wrong, then the numbers</p> <p>19 themselves would also be subject to inaccuracy; true?</p> <p>20 A. Let me say this about that. Both in June 14th</p> <p>21 presentation and in this declaration, we've tried to</p> <p>22 present an accurate picture of the City's books and</p> <p>23 records and status to the best extent possible that we</p> <p>24 have. Where there were questions we have tried to err</p> <p>25 on the side of reasonable assumptions as opposed to</p>	<p style="text-align: right;">Page 167</p> <p>1 were monetized, that would provide additional cash to</p> <p>2 pay obligations including retirement and health</p> <p>3 obligations; correct?</p> <p>4 A. Well, additional cash from onetime asset sales may not</p> <p>5 necessarily equal cash flows. As I understand the</p> <p>6 analysis we've tried to present is cash flows based</p> <p>7 upon a recurring basis as opposed to onetime assets</p> <p>8 but it would yield additional cash.</p> <p>9 Q. Yes. If you sold an asset and had money, you would</p> <p>10 have the money available to pay something?</p> <p>11 A. Yeah, you might have a onetime -- I'm not an</p> <p>12 accountant, but you might have a onetime cash charge,</p> <p>13 yes.</p> <p>14 Q. And if the cash, the amount you got was large, it</p> <p>15 could last for a long period of time; correct?</p> <p>16 A. Well, it depends upon what --</p> <p>17 MR. SHUMAKER: Objection, form.</p> <p>18 A. Depends upon what it was used for. I mean, what are</p> <p>19 you talking about? When you say could last for a long</p> <p>20 period of time, it could be a one -- you could sell</p> <p>21 one asset for \$5 million and that wouldn't last a</p> <p>22 month.</p> <p>23 Q. Yes, and depending on the amount of assets that were</p> <p>24 sold, if you got a substantial amount of money, that</p> <p>25 could enable the City of Detroit to pay ongoing bills</p>
<p style="text-align: right;">Page 166</p> <p>1 unreasonable assumptions either way. But your general</p> <p>2 question as to whether or not if the information going</p> <p>3 in was inaccurate, revealed an inaccurate result, I</p> <p>4 think it's true as a matter of just common sense and</p> <p>5 logic.</p> <p>6 Q. And the same thing as to assumptions. If the</p> <p>7 assumption made was wrong, then the output would be</p> <p>8 wrong also?</p> <p>9 A. I think that's why we asked several times to have a</p> <p>10 discussion about the assumptions that are necessary</p> <p>11 for pension benefits.</p> <p>12 Q. Now, the cash flows that are being reported in your</p> <p>13 declaration, those do not include any assumptions as</p> <p>14 to the monetization of various assets that the City</p> <p>15 continues to hold; is that right?</p> <p>16 MR. SHUMAKER: This is paragraph 56 that</p> <p>17 you're referring to, counsel?</p> <p>18 MR. ULLMAN: Yeah, I'm looking in general.</p> <p>19 MR. SHUMAKER: In cash flow?</p> <p>20 MR. ULLMAN: Yeah, cash flow.</p> <p>21 A. You're talking about generally do the cash flows</p> <p>22 include any monetization of any City assets?</p> <p>23 Q. Yeah.</p> <p>24 A. No, they do not.</p> <p>25 Q. And obviously if assets currently held by the City</p>	<p style="text-align: right;">Page 168</p> <p>1 for some period of time; true?</p> <p>2 MR. SHUMAKER: Objection to form.</p> <p>3 A. Here again, depending upon the size of the asset, but</p> <p>4 anything is possible.</p> <p>5 Q. Okay. Now, the City of Detroit owns certain pieces of</p> <p>6 art that are stored at the Detroit Institute of Art;</p> <p>7 is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And how many is that?</p> <p>10 A. I think the City owns approximately 66,000 pieces of</p> <p>11 art.</p> <p>12 Q. Now, those --</p> <p>13 A. No, strike that. Let me be clear so we can move on.</p> <p>14 Q. Yeah.</p> <p>15 A. I think there are 66,000 pieces of art over at Detroit</p> <p>16 Institute of Art. I'm not sure the City owns all</p> <p>17 66,000 pieces. I've been informed that it owns 35,000</p> <p>18 of those pieces in an undisputed capacity.</p> <p>19 Q. Okay, that's what I was getting at. And that's</p> <p>20 distinct from art that is subject to a public -- or is</p> <p>21 or may be subject to a public trust or something like</p> <p>22 that. This is 35,000 pieces that the City owns, as</p> <p>23 you said, in an undisputed capacity?</p> <p>24 A. Outright, yes.</p> <p>25 Q. Outright. Now, is it correct that the City has</p>

<p>Page 169</p> <p>1 retained Christie's to appraise this City-owned art?</p> <p>2 A. Yes.</p> <p>3 Q. And have you gotten back any information yet from</p> <p>4 Christie's as to the appraised value?</p> <p>5 A. No.</p> <p>6 Q. And do you have any understanding as to the value of</p> <p>7 the appraised -- of the art that's being appraised</p> <p>8 independent of what -- of Christie's as a source?</p> <p>9 A. Only what I've read in various news articles and</p> <p>10 blogs.</p> <p>11 Q. And I think you've seen press reports indicating that</p> <p>12 for some of the most important works alone the value</p> <p>13 could be at least 2.5 billion or something on that</p> <p>14 order?</p> <p>15 A. We talked about press reports earlier and I was</p> <p>16 cautioned to be careful so I'm going to say the same.</p> <p>17 Q. I'm just asking.</p> <p>18 A. I'm trying to respond to your question. I'm going to</p> <p>19 say the same thing about press reports here. I have</p> <p>20 seen press reports reporting various values for the</p> <p>21 art.</p> <p>22 Q. And have you seen press reports reporting for the most</p> <p>23 important pieces alone values on the order of</p> <p>24 2.5 billion?</p> <p>25 A. I don't recall if I've seen those specific press</p>	<p>Page 171</p> <p>1 Q. I'm not asking about decisions, I'm just asking what</p> <p>2 you considered.</p> <p>3 A. We considered a lot of things, yes.</p> <p>4 Q. And have you -- well, then can you answer my question</p> <p>5 more specifically? What if any ways to monetize the</p> <p>6 art have you considered other than an outright sale?</p> <p>7 A. I think there's been discussions about some form of --</p> <p>8 and I'm not clear because to be direct, I know that</p> <p>9 some of my -- I've never been to DIA, I don't think</p> <p>10 I've ever spoken with their board, I know that some of</p> <p>11 my consultants have been over there and have had</p> <p>12 various discussions about the art. I think the</p> <p>13 discussions were very high level and very general.</p> <p>14 That's what I know.</p> <p>15 Q. Okay, that's really very nonspecific. Are you aware</p> <p>16 of any specific consideration given to any form of</p> <p>17 monetizing the art other than an outright sale?</p> <p>18 A. No, nothing specific.</p> <p>19 Q. Could be a lease -- sorry, but nothing has been</p> <p>20 identified as a possible route to monetize?</p> <p>21 A. Nothing specific. There have been discussions, but</p> <p>22 nothing specific.</p> <p>23 Q. Have there been discussions of leasing as a possible</p> <p>24 way to monetize?</p> <p>25 A. Possibly, yes.</p>
<p>Page 170</p> <p>1 reports.</p> <p>2 Q. Do you have any reason to believe that the value of</p> <p>3 the City-owned art is less than something on that</p> <p>4 order of magnitude?</p> <p>5 A. I'm relatively agnostic on the value of the art at</p> <p>6 this point. I'm waiting to see the appraisal.</p> <p>7 Q. Do you have any understanding as you sit here today as</p> <p>8 to what the value of the City-owned art is?</p> <p>9 A. No.</p> <p>10 Q. Are you considering selling the City-owned art to</p> <p>11 generate cash?</p> <p>12 A. What I've said consistently is all options on the</p> <p>13 table, but we first have to decide what we're talking</p> <p>14 about.</p> <p>15 Q. Do you have any understanding as to how long it would</p> <p>16 take to sell the art if a decision were made to sell</p> <p>17 it?</p> <p>18 A. No.</p> <p>19 Q. Have you considered other ways to monetize the art</p> <p>20 besides an outright sale?</p> <p>21 A. All options are on the table.</p> <p>22 Q. Well, have you considered any others in particular?</p> <p>23 A. We have not made -- meaning my team and I have not</p> <p>24 made any decisions with regard to the art contained at</p> <p>25 DIA.</p>	<p>Page 172</p> <p>1 Q. Okay. And do you have any understanding of the amount</p> <p>2 of cash flow that could be generated on an annual</p> <p>3 basis if the art were leased?</p> <p>4 A. Sitting here today, no.</p> <p>5 Q. Has that number been talked about? Is there a</p> <p>6 document that might discuss that?</p> <p>7 A. No, no, there's no document. I -- I -- in an effort</p> <p>8 to be accurate, I think I had a discussion with one of</p> <p>9 the representatives at Christie's that was generally</p> <p>10 speaking leasing is a very difficult thing to do.</p> <p>11 That's the nature of the discussion, that you would</p> <p>12 have to have the right pieces at the right time at the</p> <p>13 right market to generate cash.</p> <p>14 Q. So there was no discussion about the amount of money</p> <p>15 it could generate?</p> <p>16 A. No, no, it -- there was some discussion about</p> <p>17 \$1 million, for instance, or something like that, but</p> <p>18 it's nothing substantive.</p> <p>19 Q. Okay. Now, the City also has a department of water</p> <p>20 and sewers; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And as I understand it, the department of water and</p> <p>23 sewers operates as a separate entity for accounting</p> <p>24 and operating purposes?</p> <p>25 A. As a result of Judge Cox's opinion, it has separate</p>

<p style="text-align: right;">Page 173</p> <p>1 procurement, accounting and managerial</p> <p>2 responsibilities, but as it's stated in that opinion,</p> <p>3 it remains an asset in the department of the City.</p> <p>4 Q. And is it correct that the water and sewer department</p> <p>5 has issued secured bonds?</p> <p>6 A. Yes, they're in my June 14th proposal.</p> <p>7 Q. Okay, and I don't recall. What was the value of the</p> <p>8 bonds that were issued?</p> <p>9 A. The secured portion of the bonds all in, but this also</p> <p>10 includes some parking -- parking was 95 million, some</p> <p>11 dedicated state revenue bonds was a couple hundred</p> <p>12 million, but generally speaking about 5.7 billion.</p> <p>13 Q. And those bonds -- the 5.7 billion is secured by the</p> <p>14 assets of the department?</p> <p>15 A. Yes, yes.</p> <p>16 Q. And as you understand it, does the value of the assets</p> <p>17 of the department of water and sewers exceed the</p> <p>18 values of the secured bonds?</p> <p>19 A. I don't know if there's been a formal appraisal, but I</p> <p>20 certainly would hope so.</p> <p>21 Q. Do you have an understanding of the value of the water</p> <p>22 and sewer assets?</p> <p>23 A. Not sitting here today.</p> <p>24 Q. Do you have a general understanding, a general</p> <p>25 recollection?</p>	<p style="text-align: right;">Page 175</p> <p>1 department's operations, not the assets, from the City</p> <p>2 and perhaps increase additional value as a byproduct</p> <p>3 of that process.</p> <p>4 Q. And this is what is referred to in the June 14th</p> <p>5 proposal or this transaction with this new authority?</p> <p>6 A. Yes.</p> <p>7 Q. And that would involve some sort of payment by the</p> <p>8 authority to the City?</p> <p>9 A. Yes, some sort of lease payment or like kind payment.</p> <p>10 Q. Do you have any understanding -- can you give me any</p> <p>11 idea as to the value that would be achieved by that,</p> <p>12 the amount of cash that the City would be achieving,</p> <p>13 realizing, if that went through?</p> <p>14 A. Judge Cox's opinion, and I'm referencing the opinion</p> <p>15 to state what's already in the record, references I</p> <p>16 believe a \$62 million payment, which he called wildly</p> <p>17 speculative. But there may be payments in that</p> <p>18 regard, somewhere between 40 or lower to maybe up to</p> <p>19 100. It's unclear.</p> <p>20 Q. Right now who has control over the revenues that are</p> <p>21 taken in by the department of water and sewers?</p> <p>22 A. City does.</p> <p>23 Q. Now, the department of water and sewers also had</p> <p>24 retirement obligations for its --</p> <p>25 A. Well, they have employees that are members of the</p>
<p style="text-align: right;">Page 174</p> <p>1 A. When you talk about asset values, you're talking about</p> <p>2 switches, pipes, valves, things along that nature. I</p> <p>3 don't think I've ever seen an appraisal of the value</p> <p>4 of the assets of the water and sewer department.</p> <p>5 Q. Do you have a general understanding of what the value</p> <p>6 of the assets --</p> <p>7 A. No.</p> <p>8 Q. -- is worth?</p> <p>9 A. No.</p> <p>10 Q. Have you taken any steps to monetize the value of the</p> <p>11 assets owned by the water and sewer department?</p> <p>12 A. When you say monetize, I'm going to respond to the</p> <p>13 question on the basis that monetize is in the broad</p> <p>14 sense --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- not whether it's a lease, whether it's a sale,</p> <p>17 getting authority.</p> <p>18 Q. Just get money for it.</p> <p>19 A. Get money for it, get some dough, okay, just want to</p> <p>20 be clear. Discussions are ongoing in that regard.</p> <p>21 Q. What are those discussions in a nutshell?</p> <p>22 A. Those are commercially sensitive so I don't want to</p> <p>23 interfere. Suffice it to say, the -- Judge Cox's</p> <p>24 opinion spoke to the possibility of creating an</p> <p>25 authority that would remove the water and sewer</p>	<p style="text-align: right;">Page 176</p> <p>1 General retirement fund.</p> <p>2 Q. Right. And how were payments to the retirement fund</p> <p>3 for those employees to be made? In other words, were</p> <p>4 they to be made directly by the department of water</p> <p>5 and sewer, to the Retirement Systems or were they made</p> <p>6 by the department of water and sewer to the City,</p> <p>7 which then was to remit them to the Retirement</p> <p>8 Systems?</p> <p>9 A. You're talking about the transaction or steady state</p> <p>10 now?</p> <p>11 Q. The steady state.</p> <p>12 A. Steady state now. My understanding is that's part of</p> <p>13 the City's obligation.</p> <p>14 Q. So the DWS, department of water and sewers, is to give</p> <p>15 the money for the retirement to the City, the City</p> <p>16 was --</p> <p>17 A. City makes it.</p> <p>18 Q. -- was then supposed to make the payment to the</p> <p>19 Retirement Systems?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And are you aware of any funds that were transmitted</p> <p>22 by the department of water and city (sic) to the City</p> <p>23 for the purpose of funding pensions that were then</p> <p>24 used by the City for other purposes?</p> <p>25 A. I don't know if you can identify specific water and</p>

<p style="text-align: right;">Page 177</p> <p>1 sewer funds and transactions. I know that the City 2 has borrowed from the General Retirement System from 3 time to time. 4 MR. ULLMAN: So that's not really answering 5 my question. Can I have my question read back please? 6 THE WITNESS: Okay, sure. 7 (Record read back as requested.) 8 A. Am I aware? It would be speculative. I've -- no. 9 Q. So is it your testimony that all monies that were 10 transmitted by department of water and sewer to the 11 City to make payment for pension benefits were in fact 12 properly applied to the Retirement Systems as pension 13 contributions? 14 A. No, that's a conclusion on my statement I wasn't 15 aware. That may have occurred, but sitting here 16 today, without speculating, I'm not aware of a 17 specific transaction or transactions. 18 Q. So it may have occurred, you just don't know one way 19 or the other? 20 A. I just don't know. 21 Q. Now, you indicated that the City has control over the 22 money that's taken in by the department of water and 23 sewers; yes? 24 A. City has control over the department of water and 25 sewer. There are certain obligations due from the</p>	<p style="text-align: right;">Page 179</p> <p>1 A. I don't know that. 2 Q. Now, are you aware that in its most current proposals 3 the department of water and sewer is proposing over 4 the next several years to spend hundreds of millions 5 of dollars on capital projects? 6 A. Yes. 7 Q. And have you given any consideration to not having 8 that money used for capital improvements to water and 9 sewer including new projects but in fact to have that 10 money used to satisfy other existing City obligations, 11 which may include but not be limited to pension or 12 healthcare obligations? 13 A. Have we given some consideration? Here again, this is 14 wrapped up in the potential transaction that is being 15 discussed and I think it's been reported with a number 16 of counties and other parties so I want to be careful 17 that I don't impact commercially sensitive 18 information. I know that the capital improvement plan 19 at DWSD is a component of ensuring that its 20 creditworthiness remains separate and apart from the 21 City and is at a higher rate. Your question was have 22 I given any consideration to not having them make that 23 capital improvements? 24 Q. Or to having make a lesser capital improvement, 25 thereby obtaining money for the City to use for other</p>
<p style="text-align: right;">Page 178</p> <p>1 department of water and sewer, but yes. 2 Q. Okay. So if the department of water and sewer has 3 money that it wants to spend for a particular purpose, 4 is it correct that the City could decide that the 5 money should not be spent for that purpose and used 6 for something else? 7 A. That would depend upon the nature of the bond 8 obligations at department of water and sewer because 9 although the department remains a department of the 10 City, the bond obligations that are secured have 11 certain security interests in that revenue stream. 12 Q. Okay. Is there anything that restricts the City from 13 taking money from the department of water and sewer 14 that the department of water and sewer wishes to use 15 for and has earmarked for capital improvements to the 16 water and sewer system? 17 A. Yes, there's probably restrictions in the bond 18 instruments. 19 Q. And other than what may be in the bond instruments is 20 there any legal prohibition on the City taking the 21 money that the DWS would otherwise use for capital 22 improvements? 23 A. Yes, there might be under Judge Cox's opinion. 24 Q. But without reviewing the specifics of Judge Cox's 25 opinion, you don't know that?</p>	<p style="text-align: right;">Page 180</p> <p>1 purposes? 2 A. And my response to that would be that's all wrapped up 3 in the discussions regarding transaction and what's 4 necessary to maximize the ability of that department 5 to generate income for the benefit of the City. 6 Q. So is that something that you're looking at and 7 considering to take money that would otherwise be used 8 for capital improvements and apply it to satisfy 9 existing obligations? 10 A. As this is a potential transaction that we talked 11 about on June 14th, that's currently under discussion 12 with some of our customer base including other 13 counties. I want to be very careful that I don't 14 interfere with those negotiations by saying something 15 that would not enhance the value or maintain the value 16 of that asset. Suffice it to say, we are aware of the 17 situation and it is wrapped up in the discussions 18 we're having about a potential transaction. 19 Q. Okay, and at this potential transaction, take that off 20 the table, assume it doesn't go through or is 21 withdrawn, have you given any consideration to simply 22 looking at the capital monies that are available at 23 DWSD and using some or all of them to fund existing 24 obligations rather than new capital improvements or 25 capital improvements to existing work at the</p>



<p style="text-align: right;">Page 181</p> <p>1 department?</p> <p>2 A. Let me say it this way. We have examined a number of</p> <p>3 options and alternatives related to DWSD including</p> <p>4 those that might be implicated by your question.</p> <p>5 Q. So is the answer to my question yes, you have</p> <p>6 considered that?</p> <p>7 A. We have considered all operations at DWSD including</p> <p>8 those that might be implicated by your question. I</p> <p>9 said before I'm going to be very careful so I don't</p> <p>10 interfere with the commercial aspects with what's</p> <p>11 going on now.</p> <p>12 Q. And can you tell me how much you believe or understand</p> <p>13 the City can take from the capital fund from DWSD in</p> <p>14 order to satisfy its ongoing obligations if it chose</p> <p>15 to do that?</p> <p>16 A. I didn't say --</p> <p>17 MR. SHUMAKER: Objection to form.</p> <p>18 A. I didn't say that we would take any capital, I said</p> <p>19 we'd consider it.</p> <p>20 Q. I didn't -- I'm asking can you tell me how much would</p> <p>21 you understand is available to take if the City</p> <p>22 decides to go down that route?</p> <p>23 A. No, I can't tell you that.</p> <p>24 Q. Have you done any analysis of that?</p> <p>25 A. Analysis is a strong word. Have we looked at the</p>	<p style="text-align: right;">Page 183</p> <p>1 when you talk about values, there's a range of values</p> <p>2 from asset disposition and outright sale and</p> <p>3 privatization to creating an operation or an authority</p> <p>4 where someone has brought in, as has been done in</p> <p>5 Washington, D.C., to actually operate the garages and</p> <p>6 meters. So we're looking at a range of alternatives</p> <p>7 to determine what those values could be.</p> <p>8 Q. What's the range of values you're looking at so far?</p> <p>9 A. We don't have that yet.</p> <p>10 Q. How concrete have you -- let me withdraw that.</p> <p>11 What specific steps have been taken so far?</p> <p>12 A. Our investment advisors and consultants are beginning</p> <p>13 discussions with various parties that undertake these</p> <p>14 types of operations within a range of alternatives to</p> <p>15 try to assess values.</p> <p>16 Q. And the investment advisors, would that be Buckfire?</p> <p>17 A. Yeah, it would be our investment banker, Ken Buckfire,</p> <p>18 Miller Buckfire.</p> <p>19 Q. Okay. In the June 14th proposal you also make</p> <p>20 reference to about 22 square miles of land that the</p> <p>21 City owns?</p> <p>22 A. City-owned land, yes.</p> <p>23 Q. Do you have an understanding as to the value of that</p> <p>24 land?</p> <p>25 A. I've been informed that some of the value is at best</p>
<p style="text-align: right;">Page 182</p> <p>1 options and related to the transaction all</p> <p>2 potentialities, but I can't tell you what that number</p> <p>3 would be.</p> <p>4 Q. Who within the City would be most knowledgeable about</p> <p>5 the capital funds that are available at the DWSD?</p> <p>6 A. At the City?</p> <p>7 Q. Yeah.</p> <p>8 A. Probably the operations at DWSD.</p> <p>9 Q. You also made reference in the June 14th proposal to</p> <p>10 the parking systems that the City owns.</p> <p>11 A. Yes.</p> <p>12 Q. And as I understand it there are nine garages?</p> <p>13 A. Yes.</p> <p>14 Q. Two lots with over 1,200 spaces?</p> <p>15 A. Yes.</p> <p>16 Q. And over 3,400 meters?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have an understanding as to the value of those</p> <p>19 assets?</p> <p>20 A. No, we're currently doing our analysis as to the value</p> <p>21 of those assets now.</p> <p>22 Q. And you have no preliminary view as to what they're</p> <p>23 worth? Nothing's been reported back to you on at</p> <p>24 least a tentative basis?</p> <p>25 A. No, nothing has been reported back to me on -- because</p>	<p style="text-align: right;">Page 184</p> <p>1 nominal, but no, sitting here today, I do not have a</p> <p>2 number as to the value of the land.</p> <p>3 Q. Have any steps been taken to try to monetize that</p> <p>4 value, to get dough as you put it?</p> <p>5 A. Yeah. Well, here again, you're -- to get income</p> <p>6 realization perhaps I should say more articulately,</p> <p>7 but here again, we're at the preliminary steps of</p> <p>8 examining potential alternatives regarding land.</p> <p>9 Q. So you don't know yet?</p> <p>10 A. No.</p> <p>11 Q. The Belle Isle Park, that's also referenced in the</p> <p>12 June 14th proposal?</p> <p>13 A. Yes.</p> <p>14 Q. It's indicated that there's a prospective lease to the</p> <p>15 state?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And do you expect that to go through?</p> <p>18 A. I'm going to ask for it. It was proposed and was not</p> <p>19 accepted in time so the state withdrew it, but I do</p> <p>20 believe we're going to intend to ask that that lease</p> <p>21 be renewed.</p> <p>22 Q. And what's the annual rent the City would get under</p> <p>23 that lease?</p> <p>24 A. The City has a \$6 million maintenance obligation and</p> <p>25 that would be taken up by the state so that wouldn't</p>



<p>Page 185</p> <p>1 be cash to the City, that would relieve us of an 2 obligation. It has several millions to tens of 3 millions of dollars in deferred maintenance at some of 4 the structures on the island and the state would 5 undertake that obligation as well. 6 Q. So it would essentially relieve the City of Detroit -- 7 A. Take it off. 8 Q. -- of debt burden it would otherwise bear? 9 A. Yes. 10 Q. You also mention the Joe Louis Arena? 11 A. Yes. 12 Q. Any steps taken to monetize that? 13 A. Here again, we're under initial analysis and 14 appraisals about what can be done with that. 15 Q. Do you have any understanding so far as to what the 16 potential cash value is that could be gotten from the 17 use of that stadium? 18 A. Well, there are existing statements regarding cash 19 flows and use of that stadium, but we're reviewing 20 different ways to look at it in some fashion. 21 Q. Do you have any understanding or belief as to the 22 value that can be realized from that? 23 A. No. 24 Q. Now, in your June 14th proposal you also make 25 reference to trying to increase the tax collection</p>	<p>Page 187</p> <p>1 determine whether or not it would yield a net positive 2 benefit. 3 Q. Are you aware in the recent past of a tax write-off, 4 an actual write-off of taxes, on the order of around 5 700 million? 6 A. I have -- I didn't hear that particular figure. I had 7 heard that there was a write-off. Am I aware of it? 8 Yes, I'm aware of it. 9 Q. And what's your understanding as to what that 10 write-off was? Was it 700 million, 800 million? 11 What's the figure you heard? 12 A. I don't know what the figure was, but I heard that it 13 was based on noncollectibles. That the probability of 14 collecting it was very low. 15 Q. Are you aware of any report that indicates that there 16 was a write-off on the order of 700 million, possibly 17 more, the figure I heard was 700 million, that may in 18 fact be collectible? 19 A. I've heard that some people have maintained that is 20 collectible, but I've also heard that the general 21 consensus is it may not be. 22 Q. Okay, and is there a specific set of taxes that that 23 pertains to, this figure we're talking about, seven or 24 800? 25 A. I don't know. I know that that is one of the -- in</p>
<p>Page 186</p> <p>1 rate. 2 A. Yes. 3 Q. Does the City keep a ledger, a line item, for 4 uncollected taxes? 5 A. The City keeps many line items. I think we -- you 6 mean uncollected taxes? 7 Q. Yeah, listing of -- 8 A. Yes. 9 Q. -- this is the amount for uncollected taxes? 10 A. Yes. 11 Q. Are you aware of any uncollected taxes that have in 12 the past been written off the City's books in the 13 recent tax but may in fact be collectible? 14 MR. SHUMAKER: Objection to form. 15 A. No. No. In fact, discussions that I've had is that 16 that -- the 50 percent compliance rate is not linear, 17 that is for every dollar put in to collect additional 18 taxes doesn't necessarily mean you're going to yield a 19 dollar plus in doing it. It might actually be a loss 20 leader so we're examining ways of trying to increase 21 collections. I assume you're talking about real 22 estate property taxes or income taxes? 23 Q. Or income, any kind of taxes. 24 A. Yeah, we're examining a number of different 25 alternatives in that regard, but we're trying to</p>	<p>Page 188</p> <p>1 the presentation we talk about various City assets, 2 airport, Belle Isle, parking, City-owned land, 3 City-owned buildings, others, we also have talked 4 about account receivables and I know that that fits in 5 that bucket, potential account receivables. 6 Q. Are you aware that the treasurer, Andy Dillon, has 7 acknowledged that there's a report that exists that 8 talks about the 700 or so million figure written off 9 that really is collectible? 10 A. That's what I had heard. That's what I meant when I 11 said I heard to that extent, yeah. 12 Q. And do you know what this report is? 13 A. No, I just -- I just heard about it coming in in the 14 process of doing some due diligence, but one, I 15 haven't seen it; two, we're looking into it. 16 Q. So you're in the process of trying to run down that 17 report and see what it is? 18 A. We're trying to run down a number of reports, rumors 19 and suggestions that there are account receivables due 20 the City. 21 MR. ULLMAN: And I would like to request a 22 copy of that report. 23 MR. SHUMAKER: We'll look into it. 24 THE WITNESS: If we have it. 25 Q. Now, did the City put in place tax programs -- tax</p>

<p style="text-align: right;">Page 189</p> <p>1 amnesty programs?</p> <p>2 A. Has the City put in place?</p> <p>3 Q. Yes.</p> <p>4 A. Since I've been here?</p> <p>5 Q. Yes.</p> <p>6 A. A tax amnesty program?</p> <p>7 Q. Yes, to try to get people who owe money --</p> <p>8 A. No, not yet, no.</p> <p>9 Q. Is that something you're considering?</p> <p>10 A. We have had discussions in that regard. I know that</p> <p>11 it's done for parking tickets and tax amnesty and</p> <p>12 other municipalities, particularly in Washington,</p> <p>13 D.C., but we have not done that yet.</p> <p>14 Q. And I think you indicated that the City has not been</p> <p>15 very efficient in collecting taxes; has it?</p> <p>16 A. I think that's a fair statement.</p> <p>17 Q. Do you have an understanding as to how much tax there</p> <p>18 is that's collectible, in fact could be collected if</p> <p>19 the City did a more efficient job in going after tax</p> <p>20 debtors?</p> <p>21 A. Yeah, as I said, the discussions we've had is that</p> <p>22 collection efforts are not necessarily linear; that</p> <p>23 is, for every dollar spent you're going to get more in</p> <p>24 taxes. And in fact, there have been some discussions</p> <p>25 that to the extent you try, it could actually be</p>	<p style="text-align: right;">Page 191</p> <p>1 law and rent control law; is that right?</p> <p>2 A. No, the -- those were Chapter 9 cases. The cases I</p> <p>3 was talking about having rent control and Escheat was</p> <p>4 while I was at RTC. The state dealer law cases was a</p> <p>5 Chapter 11 case for Chrysler.</p> <p>6 Q. Okay.</p> <p>7 A. So it was federal law under FIRREA. If you remember</p> <p>8 the discussion, I said Financial Institution Reform</p> <p>9 Recovery Enforcement Act of 1989 as amended trumps</p> <p>10 state laws.</p> <p>11 Q. So are you aware of any cases involving a Chapter 9</p> <p>12 bankruptcy where as a result of going into Chapter 9 a</p> <p>13 state law was held unenforceable or was held not to</p> <p>14 apply in a particular situation?</p> <p>15 A. I remember reading -- well, this is a communication</p> <p>16 from counsel.</p> <p>17 MR. SHUMAKER: Let me caution you.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. SHUMAKER: Don't reveal a communication</p> <p>20 from counsel.</p> <p>21 THE WITNESS: Okay.</p> <p>22 MR. SHUMAKER: The question is are you</p> <p>23 aware of any cases.</p> <p>24 A. Am I aware of any cases, yes.</p> <p>25 Q. And what is that case?</p>
<p style="text-align: right;">Page 190</p> <p>1 deleterious to the billion dollars of revenue that we</p> <p>2 anticipate -- on average that we anticipate receiving</p> <p>3 in the out years. So we're examining those</p> <p>4 discussions to see if you can get more recovery by</p> <p>5 additional collection efforts or if you can be more</p> <p>6 efficient in your ongoing collection efforts as well</p> <p>7 as more user-friendly for those who want to pay their</p> <p>8 taxes. We're looking at the full range of enhancing</p> <p>9 both tax collections as well as tax payments.</p> <p>10 Q. Do you have any understanding as to how much value</p> <p>11 could be achieved if those goals were realized?</p> <p>12 A. Not sitting here today.</p> <p>13 Q. And are there any ongoing reports that have been</p> <p>14 prepared or documentation talking about what the</p> <p>15 realization to the City could be if it got its tax</p> <p>16 collection act more in line?</p> <p>17 A. I don't know if it's a report. I've seen some</p> <p>18 correspondence about tax rates, yes.</p> <p>19 MR. ULLMAN: Okay, I would like to request</p> <p>20 copies of those documents also.</p> <p>21 Q. Okay, and then, Mr. Orr, in your testimony this</p> <p>22 morning I think you made reference to some other cases</p> <p>23 that you were aware of where you said that as a result</p> <p>24 of going into Chapter 9, state laws were effectively</p> <p>25 trumped and you gave some examples of things, Escheat</p>	<p style="text-align: right;">Page 192</p> <p>1 A. I can't -- it was an attorney-client communication.</p> <p>2 Q. And are you aware of any cases where, to use your</p> <p>3 phraseology, as a result of a Chapter 9 filing by a</p> <p>4 municipality the state constitution was trumped?</p> <p>5 A. Chapter 9 filing?</p> <p>6 Q. Yes.</p> <p>7 A. I'm not sure, because the case I'm aware of, I don't</p> <p>8 know if it was a state constitution. I don't recall.</p> <p>9 MR. ULLMAN: Okay, I have no more questions</p> <p>10 at this time. But I may reserve the right, we have</p> <p>11 some other people that are going to ask questions, at</p> <p>12 the end of that to ask some follow-ups, if that's</p> <p>13 possible.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. SHUMAKER: You want to take a quick</p> <p>16 break?</p> <p>17 MR. ULLMAN: Yeah, why don't we take a</p> <p>18 break. Someone else has to sit here.</p> <p>19 THE VIDEOGRAPHER: Going off the record at</p> <p>20 2:53 p.m.</p> <p>21 (A brief recess was taken.)</p> <p>22 THE VIDEOGRAPHER: We're back on record at</p> <p>23 3:07 p.m.</p> <p>24 EXAMINATION</p> <p>25 BY MS. LEVINE:</p>



<p style="text-align: right;">Page 193</p> <p>1 Q. Good afternoon, Mr. Orr. Thank you for appearing 2 today. Your deposition is continued, you're still 3 under oath. To save some time I'm not going to repeat 4 some of the instructions we went through at the 5 beginning of the deposition. 6 For the record Sharon Levine, Lowenstein 7 Sandler, for the American Federation of State, County 8 and Municipal Employees and with me Michael Artz, 9 in-house counsel of AFSCME. 10 A. Okay. Thank you and I understand. 11 (Discussion held off the record.) 12 Q. Okay, sorry for that. 13 A. Okay. 14 Q. Mr. Orr, there was some colloquy -- 15 MR. SHUMAKER: Mic. 16 Q. There was some colloquy this morning with regard to 17 negotiations or discussions -- 18 A. Yes. 19 Q. -- prior to the filing of the bankruptcy case. 20 A. Yes. 21 Q. Are you familiar with concessionary bargaining 22 historically in Detroit? 23 A. Could you -- I have read to some degree about the 24 labor history and concessionary bargaining in Detroit 25 stemming from Walter Reuther on forward, even</p>	<p style="text-align: right;">Page 195</p> <p>1 legal conclusion. We don't have to do the reservation 2 of rights. 3 A. Okay. 4 Q. I'm just asking Mr. Orr, as he's sitting here today, 5 his understanding of whether or not it's possible 6 without a legal conclusion to arrive at a consensual 7 agreement, with or without calling it negotiations, 8 discussions or proposals, with regard to retiree -- 9 with regard to benefits without a Chapter 9? 10 A. Is it possible? 11 Q. Yes. 12 A. Yes, anything a possible. I think I've said that. 13 Q. Okay, now, historically in Detroit isn't it a fact 14 that there were concessionary provisions made with 15 regard to benefits that impacted retirees previously 16 that did not involve Chapter 9? 17 MR. SHUMAKER: Objection, foundation. 18 A. Over what period of time? 19 Q. Is it your understanding that at any point in time? 20 A. As I said -- 21 Q. No, no, it's a very -- it's a yes or no question. At 22 any point in time prior to the bankruptcy filing have 23 there been concessionary discussions, negotiations, 24 whatever, in Detroit that have resulted in 25 concessionary changes to benefits that impacted</p>
<p style="text-align: right;">Page 194</p> <p>1 concessionary bargaining going forward from I would 2 say Mayor Kilpatrick, Mayor Cockrel and Mayor Bing and 3 in specific the 10 percent wage cuts and other 4 concessions, but if there's something else that you 5 would like to talk about, please explain it. 6 Q. So that's yes? 7 A. Yes. 8 Q. Generally? 9 A. Well, generally, but if there's something specific, 10 please, yes. 11 Q. Is it your view that concessionary bargaining can 12 result in concessions with the -- with regard to 13 benefits without a Chapter 9? 14 MR. SHUMAKER: Objection, calls for legal 15 conclusion. 16 A. It was my hope -- and here again, I'm going to say the 17 same statement that I said earlier today, collective 18 bargaining and concessionary bargaining, however you 19 call it, is suspended under Paris. I don't want to 20 waive any rights that the City may have under 436. Do 21 I recognize people certainly aren't in agreement. 22 Um -- 23 Q. Let me rephrase the question. I just want to clarify. 24 A. Okay. 25 Q. I was asking for your view. I'm not asking for a</p>	<p style="text-align: right;">Page 196</p> <p>1 retirees? 2 MR. SHUMAKER: Objection, foundation. 3 A. Not within the time frame that I have. 4 Q. So you're not aware of that? 5 A. No, I'm aware there have been concessionary bargaining 6 changes. My testimony is in my view that they 7 appeared to not being able to occur within the time 8 frame I had to work with. 9 Q. I wasn't asking you what you did or didn't do. I was 10 just asking you if you're aware that there -- whether 11 or not there have been in the history of Detroit 12 concessionary changes to benefits that were 13 implemented that impacted retiree benefits without 14 there having to be a Chapter 9? 15 MR. SHUMAKER: Same objection. 16 A. Well, the reason I said not within my -- you're asking 17 my view. 18 Q. I'm not asking you -- 19 A. Are you now going away from my view? 20 Q. No, I'm asking -- this is the question. 21 A. Okay. 22 Q. The question is -- 23 MS. LEVINE: Can you read back the 24 question? 25 (Record read back as requested.)</p>

<p style="text-align: right;">Page 197</p> <p>1 A. Yes, I am aware that in the history of Detroit there 2 have been concessionary bargains to certain benefits 3 without a Chapter 9. 4 Q. Okay, now, prior to the filing of this Chapter 9 -- 5 A. Uh-huh. 6 Q. -- are you aware of any concessionary bargaining 7 changes that affected retirees? 8 A. I'm hesitating because I'm trying to recall the 9 briefing papers I went through and your specific 10 question is retirees. I'm well aware of concessionary 11 bargaining changes for actives, now I'm thinking about 12 retirees. I don't know. 13 Q. Prior to the filing of this Chapter 9 petition you 14 previously discussed what I believe were four 15 meetings, June 10, June 20, July 10 and July 11; is 16 that correct? 17 A. Yes. I think we were talking about -- there were more 18 meetings than that, but I think we were talking about 19 the four meetings that were referenced on page I 20 believe 55 I believe of my declaration. Well, 21 actually it starts on 54. Okay. 22 Q. What other meetings were there? 23 A. I had had -- meetings with? 24 Q. Meetings -- well, my understanding is that the 25 meetings on June 10, 20, July 10 and July 11 were with</p>	<p style="text-align: right;">Page 199</p> <p>1 Q. Who would have placed those phone calls on your 2 behalf? 3 A. I don't know if they would have placed or if they 4 would have received them. I'm not sure, but if they 5 would have been, it would have been somebody probably 6 on labor benefits team, Evan Miller, Brian Easley or 7 others who work with them or others on the City's 8 labor department. 9 Q. If they were substantive meetings with anybody on 10 behalf of AFSCME, would that have been reported to 11 you? 12 A. More than likely, yes. 13 Q. Were there any substantive meetings with AFSCME prior 14 to the filing? 15 MR. SHUMAKER: Objection to form. 16 A. I'm going to -- outside of the meetings I mention in 17 my declaration? 18 Q. Outside of what we'll call the big four. 19 A. Okay, big four. Thank you. Sitting here today none 20 that I recall. 21 Q. Are you familiar with the so-called Webster 22 litigation? 23 A. Yes. 24 Q. Okay, that litigation was filed on July 3? 25 A. I believe so.</p>
<p style="text-align: right;">Page 198</p> <p>1 employees or retirees. Did you have other meetings 2 with employees or retirees? 3 A. You mean in a time frame? 4 Q. Yes. 5 A. Yes. Those were the formal structured meetings that 6 we recounted. My understanding is there were other 7 meetings that occurred outside of a formal process and 8 certainly a number of phone calls. 9 Q. With whom -- who is the counterparty to those 10 meetings? 11 A. I'm not sure I can capture every counterparty to every 12 meeting because my professional team and staff would 13 have various discussions, but I tried to recount ones 14 that I'm aware of and who the counterparties were in 15 my declaration. 16 Q. Was AFSCME one of the counterparties that you met with 17 outside of the four meetings we were previously 18 discussing? 19 A. I didn't meet with them, but I understand that there 20 may have been meetings or telephone calls with others. 21 Q. Were there meetings with others? 22 A. I don't know if there were meetings or phone calls. 23 There may have been meetings or phone calls. 24 Q. Were there phone calls? 25 A. I don't know. I understand there may have been.</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. And you sent your request to Governor Snyder on July 2 16th? 3 A. Yes. 4 Q. And Governor Snyder authorized the Chapter 9 filing on 5 July 18th? 6 A. Yes. 7 MS. LEVINE: Could we have it marked as Orr 8 16? 9 (Marked Exhibit No. 16.) 10 (Discussion held off the record.) 11 Q. We've just marked a document as Orr 16. It's 12 really -- it's just a Detroit News report from July 13 18th or July 17th actually at 11:00 p.m. 14 MR. SHUMAKER: I'm sorry, counsel. I see a 15 July 16 reference at the bottom. 16 MS. LEVINE: Sorry, July 16th at 11:00 p.m. 17 MR. SHUMAKER: Yeah. 18 Q. Mr. Orr, do you recall reading this press coverage at 19 the time that it was -- that it came out? 20 A. I do not recall reading this, but I can read it now. 21 Q. The -- is it your understanding that as of the date of 22 this article, the governor was not thinking about -- 23 actually I'm going to correct myself. It looks like 24 according to the printout at the bottom of the page 25 it's September 13 -- no -- that's when it was printed,</p>



<p style="text-align: right;">Page 201</p> <p>1 never mind.</p> <p>2 Was it your -- is it your understanding</p> <p>3 that as of the time of this press coverage, Governor</p> <p>4 Snyder was not yet recommending a Chapter 9 filing for</p> <p>5 Michigan --</p> <p>6 MR. SHUMAKER: Objection, foundation.</p> <p>7 Q. -- for Detroit?</p> <p>8 MR. SHUMAKER: Sorry. Objection,</p> <p>9 foundation, form.</p> <p>10 A. I don't think -- I think I was the one recommending</p> <p>11 and Governor Snyder was either going to approve or</p> <p>12 disapprove of my request. This is 11:00 p.m. I</p> <p>13 haven't seen this and it appears to be 11:00 p.m. It</p> <p>14 says -- so give me your question again.</p> <p>15 Q. What was your understanding at this point in time of</p> <p>16 Governor Snyder's view with regard to whether or not</p> <p>17 he would recommend -- he would accept your</p> <p>18 recommendation that Detroit file a Chapter 9 petition?</p> <p>19 A. It was unclear. I had gotten to the point at least on</p> <p>20 the 16th of thinking it was time for me to make the</p> <p>21 recommendation. It was unclear what the response was</p> <p>22 going to be.</p> <p>23 Q. Did you discuss the Webster litigation with the</p> <p>24 governor?</p> <p>25 A. I don't think so.</p>	<p style="text-align: right;">Page 203</p> <p>1 governor before July 18th?</p> <p>2 A. Yes, I believe I did.</p> <p>3 Q. And was it before July 18th?</p> <p>4 A. Yeah, I believe it was.</p> <p>5 Q. What did you discuss?</p> <p>6 A. Well, was it? I think generally, and here I'm going</p> <p>7 to be very careful, there were discussions I had --</p> <p>8 I'm not sure I had any discussions with the governor</p> <p>9 without either my counsel being on the line or counsel</p> <p>10 on behalf of the state and the governor being on the</p> <p>11 line so I don't know if that implicates</p> <p>12 attorney-client.</p> <p>13 MR. SHUMAKER: It certainly could.</p> <p>14 THE WITNESS: Okay.</p> <p>15 A. Without disclosing what was discussed, we had</p> <p>16 discussions.</p> <p>17 Q. Okay, so it's your position -- well, let's go back.</p> <p>18 So on July 3rd, for example, who was your</p> <p>19 counsel?</p> <p>20 A. Well, my restructuring counsel was Jones Day, but --</p> <p>21 Q. And who was the governor's counsel?</p> <p>22 A. The governor's counsel would be -- I believe in the</p> <p>23 governor's office generally heading up that group</p> <p>24 would be Mike Gadola and Valerie Brader and I think</p> <p>25 this corrects the discussion I had earlier this</p>
<p style="text-align: right;">Page 202</p> <p>1 Q. Did you discuss the Webster litigation with anybody in</p> <p>2 the governor's office?</p> <p>3 A. Was the Webster litigation the first lawsuit filed</p> <p>4 against the governor and the treasurer on the 3rd?</p> <p>5 And then the next week AFSCME joined that litigation?</p> <p>6 Was that by the UAW the first litigation and AFSCME</p> <p>7 joined that litigation the next week?</p> <p>8 Q. One was Flowers and one was Webster.</p> <p>9 A. Right. So I want to make sure we're talking about the</p> <p>10 right one. So you're talking about Webster?</p> <p>11 Q. Did you discuss either the Flowers or the Webster</p> <p>12 litigation with the governor?</p> <p>13 A. No, I didn't discuss it with the governor.</p> <p>14 Q. Did you discuss either the Webster or the Flowers</p> <p>15 litigation with anybody at the state?</p> <p>16 A. You mean on the 16th?</p> <p>17 Q. No, at any point in time.</p> <p>18 A. At any time. Let me -- let me -- let me then clarify</p> <p>19 my answer. I think -- my recollection is that there</p> <p>20 were lawsuits being filed that we did not discuss at</p> <p>21 the beginning of July. I think there was a piece of</p> <p>22 litigation that had been filed the morning of the 16th</p> <p>23 -- in direct response to your question did I discuss</p> <p>24 the litigation with the governor? At some point, yes.</p> <p>25 Q. Do you recall whether you had that discussion with the</p>	<p style="text-align: right;">Page 204</p> <p>1 morning. I may clarify a discussion I had earlier</p> <p>2 this morning but I -- well, direct response to your</p> <p>3 question, those are the people in the governor's</p> <p>4 office.</p> <p>5 Q. Okay, so if you and the governor were on the phone --</p> <p>6 A. Right.</p> <p>7 Q. -- then those conversations -- I'm not asking you</p> <p>8 about conversations that you had just you and</p> <p>9 Jones Day, I'm asking you what conversations you had</p> <p>10 with representatives -- with either the governor or</p> <p>11 representatives of the state prior to July 18th after</p> <p>12 the Webster and Flowers litigations were filed on July</p> <p>13 3.</p> <p>14 A. Okay. I think we did have conversations. I'm not</p> <p>15 sure they're not protected by attorney-client</p> <p>16 because --</p> <p>17 MR. SHUMAKER: If you believe lawyers were</p> <p>18 on those phone calls.</p> <p>19 THE WITNESS: I know lawyers were on the</p> <p>20 phone, I just don't -- I'm not acting as an attorney</p> <p>21 so I don't know -- I know there were lawyers on the</p> <p>22 phone. I know my lawyers were on the phone so I</p> <p>23 don't --</p> <p>24 MR. ULLMAN: The fact that there were</p> <p>25 lawyers on the phone doesn't make it a privileged</p>



<p>1 conversation. Page 205</p> <p>2 MS. LEVINE: Well, let him get the</p> <p>3 statement out and then we'll --</p> <p>4 THE WITNESS: I believe there was a common</p> <p>5 interest. Can I consult my attorneys?</p> <p>6 MR. SHUMAKER: Certainly. You want to take</p> <p>7 a quick break?</p> <p>8 THE VIDEOGRAPHER: Going off the record at</p> <p>9 3:24 p.m.</p> <p>10 (Discussion held off the record.)</p> <p>11 THE VIDEOGRAPHER: We're back on the record</p> <p>12 at 3:31 p.m.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Did you reach a --</p> <p>15 MS. LEVINE: Can you read back my last</p> <p>16 question?</p> <p>17 Actually I'll rephrase it.</p> <p>18 Q. Prior to July 17th did you have conversations with the</p> <p>19 governor or anybody in the governor's office?</p> <p>20 A. Prior to July 17th?</p> <p>21 Q. But since July 3.</p> <p>22 MR. SHUMAKER: About?</p> <p>23 Q. About Flowers and Webster.</p> <p>24 A. Oh.</p> <p>25 MR. SHUMAKER: Yes or no?</p>	<p>1 A. I don't know if I ever discussed both cases. I think Page 207</p> <p>2 I discussed one with Brader and/or Gadola.</p> <p>3 Q. Okay, and what did you discuss about the litigation</p> <p>4 with Brader or Gadola?</p> <p>5 MR. SHUMAKER: Objection. I'm going to --</p> <p>6 the question calls for the witness to reveal</p> <p>7 privileged attorney-client communications as part of a</p> <p>8 common interest agreement with the state and therefore</p> <p>9 I'm going to instruct him not to answer.</p> <p>10 MS. LEVINE: Okay, we'll reserve our</p> <p>11 rights.</p> <p>12 MR. SHUMAKER: Understood.</p> <p>13 Q. With regard to the conversations that you had with the</p> <p>14 governor with regard to July 3 through July 17, with</p> <p>15 regard to the potential for filing for Chapter 9, do</p> <p>16 you recall specifically on what days you had those</p> <p>17 conversations?</p> <p>18 A. No.</p> <p>19 MR. SHUMAKER: Objection to form.</p> <p>20 THE WITNESS: Oh, okay.</p> <p>21 MR. SHUMAKER: Counsel, you're saying just</p> <p>22 between him and the governor? No one else?</p> <p>23 Q. Did you have conversations that involved the governor</p> <p>24 between July 3 and July 17 with regard to the</p> <p>25 potential for filing a Chapter 9 for Detroit?</p>
<p>1 A. Yes. Page 206</p> <p>2 Q. Prior to July 17th but after July 3, did you have any</p> <p>3 discussions with the governor or anybody in the</p> <p>4 governor's office about filing a -- filing for Chapter</p> <p>5 9 for Detroit?</p> <p>6 A. Between the 3rd and 17th?</p> <p>7 Q. Yes.</p> <p>8 A. Yes.</p> <p>9 Q. With whom did you have the discussions about the</p> <p>10 Flowers litigation, the Flowers/Webster litigations?</p> <p>11 A. Attorneys in the governor's office.</p> <p>12 Q. Which ones?</p> <p>13 A. I believe Valerie Brader and Mike Gadola.</p> <p>14 Q. Anybody else?</p> <p>15 A. I'm trying to recall if in one of my discussions with</p> <p>16 the governor we discussed that specific litigation or</p> <p>17 just that there were cases being filed and I don't --</p> <p>18 I don't recall any specific discussion about that</p> <p>19 particular piece of litigation, just that there were</p> <p>20 lawsuits being filed.</p> <p>21 Q. So you discussed with Valerie Brader and Mike Gadola</p> <p>22 the Flowers and the Webster litigation, you discussed</p> <p>23 with the governor just the fact that there was the --</p> <p>24 the litigations were pending now? And we're still</p> <p>25 within the July 3 through July 17 time frame.</p>	<p>1 MR. SHUMAKER: Where counsel was not a part Page 208</p> <p>2 of the conversation?</p> <p>3 MS. LEVINE: No, no, I'm just asking if he</p> <p>4 had conversations. I haven't asked him yet who's</p> <p>5 participating and it's not privileged even with a</p> <p>6 joint defense agreement, which we're reserving our</p> <p>7 rights about, for him to tell me that conversations</p> <p>8 took place, then we will get into who participated and</p> <p>9 which conversations and then we'll decide whether or</p> <p>10 not he can talk to me about them.</p> <p>11 MR. SHUMAKER: Okay, I'm just making sure</p> <p>12 the witness doesn't reveal anything.</p> <p>13 THE WITNESS: Okay, and waive anything.</p> <p>14 MR. SHUMAKER: And waive anything.</p> <p>15 THE WITNESS: For the record there is no</p> <p>16 effort to waive anything. But I'm trying to be</p> <p>17 accurate.</p> <p>18 Q. Let me try to ask it more succinctly so that we can</p> <p>19 parse it, because I'm going to ask you questions with</p> <p>20 regard to conversations where you and the governor</p> <p>21 participated and there were other people present.</p> <p>22 A. Right.</p> <p>23 Q. I'm going to ask you questions with regard to you and</p> <p>24 other people --</p> <p>25 A. Right.</p>



<p style="text-align: right;">Page 209</p> <p>1 Q. -- in the governor's office.</p> <p>2 A. Right.</p> <p>3 Q. And then we'll find out whether or not lawyers were</p> <p>4 present at some or all of those conversations and then</p> <p>5 we'll figure out what we do about that.</p> <p>6 A. Okay, okay.</p> <p>7 Q. Okay?</p> <p>8 A. Okay.</p> <p>9 MR. SHUMAKER: Okay.</p> <p>10 Q. So let's start with just you and the governor. Did</p> <p>11 you have conversations with just the governor between</p> <p>12 July 3 and July 17th with regard to filing Chapter 9</p> <p>13 for Detroit?</p> <p>14 A. There's no mystery, I just don't want to run up</p> <p>15 against a privilege. I believe at one of my -- when</p> <p>16 was -- this was July 3rd? Oh, this is -- okay. Now,</p> <p>17 it -- I think that both the governor and I were on</p> <p>18 vacation over the 4th of July weekend so we may not</p> <p>19 have had -- and he was on vacation I believe the</p> <p>20 following week, so we probably did not have our weekly</p> <p>21 meeting. That's why there was a gap. At some point</p> <p>22 it is possible for us to have had a meeting after --</p> <p>23 just the governor and I -- and when I say just the</p> <p>24 governor and I'm including other nonlawyers, his chief</p> <p>25 of staff, his deputy chief of staff, people along</p>	<p style="text-align: right;">Page 211</p> <p>1 A. I may have.</p> <p>2 Q. Did you discuss the June 14 meeting with the governor?</p> <p>3 A. Yes, I believe, but that may have been -- between July</p> <p>4 -- give me the dates again.</p> <p>5 Q. Well, let's make it easier. Anytime after the June 14</p> <p>6 meeting --</p> <p>7 A. Yes.</p> <p>8 Q. -- did you discuss the June 14th with just the</p> <p>9 governor?</p> <p>10 A. Well, with just the governor. I typically --</p> <p>11 occasionally I will meet with just the governor, but</p> <p>12 whenever you say just the governor, my answer should</p> <p>13 include those meetings where I have members of his</p> <p>14 senior staff as well.</p> <p>15 Q. When you say members of his senior staff, who are you</p> <p>16 referring to?</p> <p>17 A. His chief of staff.</p> <p>18 Q. What's the name?</p> <p>19 A. Dennis Muchmore; John Roberts, his deputy chief of</p> <p>20 staff; sometimes my chief of staff, Shani Penn; my</p> <p>21 senior advisor, Sonya Mays; occasionally Treasurer</p> <p>22 Dillon. Is Andy an attorney?</p> <p>23 MR. ESSAD: Yes.</p> <p>24 A. Yes, he is, so I've got to be careful. So -- huh. I</p> <p>25 think Andy was sometimes at those meetings so I've got</p>
<p style="text-align: right;">Page 210</p> <p>1 those lines, I'm not thinking any of those are</p> <p>2 attorneys and if they are, I'm not waiving any</p> <p>3 privilege --</p> <p>4 Q. Okay.</p> <p>5 A. -- but it's possible we had meetings after that time</p> <p>6 with just the governor. Okay.</p> <p>7 Q. What did you discuss?</p> <p>8 A. Because he's waived the deliver the process privilege.</p> <p>9 I think we generally discussed the ongoing operational</p> <p>10 restructuring, the status at a very high level the</p> <p>11 governor, you know, we don't -- we typically do not</p> <p>12 discuss how many meetings, who attended, what was</p> <p>13 said, went back and forth, it was just a very high</p> <p>14 level of how things were going with the restructuring</p> <p>15 efforts and that the lawsuits, this is just with the</p> <p>16 governor, were beginning to create the risk that we</p> <p>17 would lose the initiative and I might be unable to</p> <p>18 discharge my obligations under 436.</p> <p>19 Q. Did you have any conversations without counsel between</p> <p>20 you and the governor between June 14 and July 3?</p> <p>21 A. June 14 and July 3?</p> <p>22 Q. The big four was June 14, June 20, July 10 and July</p> <p>23 11.</p> <p>24 A. Without counsel?</p> <p>25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 212</p> <p>1 to be careful.</p> <p>2 Q. Okay, so at meetings where there were no counsel</p> <p>3 between June 14 and July 3, did you have any</p> <p>4 discussions with regard to the June 14 or the June 20</p> <p>5 meeting?</p> <p>6 A. I don't think there were any meetings where there were</p> <p>7 no counsel between June 14th and July 3.</p> <p>8 Q. Okay, how many times did you meet between June 14 and</p> <p>9 July 3 with the governor by in person or by telephone?</p> <p>10 A. I am not sure.</p> <p>11 Q. More than once?</p> <p>12 A. Probably.</p> <p>13 Q. More than twice?</p> <p>14 A. Likely.</p> <p>15 Q. More than six times?</p> <p>16 A. I don't think -- I don't think more than that.</p> <p>17 Q. Okay, so somewhere between two and six and at every</p> <p>18 single one of those meetings you believe counsel was</p> <p>19 present or on telephone if it was a telephonic</p> <p>20 meeting?</p> <p>21 A. Yes, sometimes we would do conference calls and there</p> <p>22 would be counsel present on the phone so I'm being</p> <p>23 very careful here, yes, there's a possibility there</p> <p>24 was counsel present at each of those meetings.</p> <p>25 Q. I'm going to ask a question, but your counsel has to</p>



<p style="text-align: right;">Page 213</p> <p>1 speak first. Are you claiming the joint defense for 2 the Flowers and the Webster litigation or are you 3 claiming joint defense with regard to the thought 4 process leading up to the filing of the Chapter 9? 5 MR. SHUMAKER: Claim -- 6 MS. LEVINE: Let me ask the question and 7 then you can assert it, but I don't want to be tricky, 8 I'm not trying to be tricky. 9 THE WITNESS: Thank you, thank you. 10 Q. During those conversations that took place prior to 11 the filing of the Webster and the Flowers litigation 12 from June 14 through July 3, did you have any -- did 13 any of the conversations that you had with the 14 governor in person or by telephone conference involve 15 discussions with regard to the filing of the Chapter 9 16 petition? 17 A. Between the 14th and the 3rd? 18 Q. Uh-huh. 19 A. I don't recall any specific discussions, but they may 20 have. 21 Q. Did you have conversations with the governor during 22 June about the -- about filing for Chapter 9 at which 23 counsel wasn't present either in person or by 24 telephone? And when I say meetings, I'm talking about 25 either in person or by telephone.</p>	<p style="text-align: right;">Page 215</p> <p>1 privilege attaches. 2 MR. SHUMAKER: If you believe he was acting 3 as an attorney, then I would caution you and instruct 4 you not to answer. If Mr. Dillon was acting as the 5 treasurer and the treasurer alone -- 6 THE WITNESS: Right. 7 MR. SHUMAKER: -- as a businessperson, then 8 you can answer. 9 THE WITNESS: Okay. Okay. That -- okay. 10 A. Yes, then that means at some of those meetings we 11 probably did discuss potential Chapter 9 filing 12 without attorneys but with Treasurer Dillon. 13 Q. Prior to July 3 what was the timing that you were 14 discussing with regard to a potential Chapter 9 15 filing? 16 A. We weren't. Generally it was consistent with what I 17 had said at the June 10th and June 14th meetings, 18 which is after June 14th we will use the next 30 days 19 to assess where we are and what progress we're making 20 and if we're making progress and I think I said at 21 that June 14th meeting in the nature of a term sheet 22 agreement in principles or concepts moving forward, 23 that we might be a position to be able to extend that. 24 I said that at June 14th assuming a steady state. 25 Q. After July 3 but before July 17 --</p>
<p style="text-align: right;">Page 214</p> <p>1 A. I think I can say this. My weekly Detroit subject 2 meetings typically include the governor, his chief of 3 staff or deputy chief of staff, Treasurer Dillon and 4 one of his employees, Tom Saxon, and/or some of our 5 advisors and attorneys. I do not recall a meeting or 6 a phone conference with the governor, it may have 7 happened, I just -- I'm not recalling it and I'm 8 trying very hard to. I do not recall a meeting or 9 phone conference where, for instance, Treasurer Dillon 10 was not either there or on the phone. And I'm trying 11 to -- in the few times that the governor and I have 12 occasion just one-on-one meetings, I'm trying to 13 recall if we discussed a Chapter 9 filing. I'm now 14 just talking about the governor of one-on-one 15 meetings. It is possible not in terms of timing, just 16 generally speaking, because here again, it was not at 17 the grand level. 18 Q. Just to clarify, I believe that your counsel will 19 allow you to answer whether or not there's been 20 discussions with regards to a Chapter 9 filing with 21 the governor so long as counsel wasn't on the phone. 22 MR. SHUMAKER: Correct. 23 A. Yes, these are the meetings I'm talking about. 24 Q. Treasurer Dillon is not counsel. 25 A. Well, he's an attorney and I don't know if the</p>	<p style="text-align: right;">Page 216</p> <p>1 A. Uh-huh. 2 Q. -- did you have any conversations with the governor or 3 his senior staff at which counsel wasn't present? 4 A. Excluding Treasurer Dillon or -- 5 Q. Excluding. 6 A. Acting as -- I don't think he was acting as an 7 attorney, I think he was acting as treasurer. 8 Q. Correct. 9 A. Okay. Yes, I believe so. 10 Q. And did you -- during -- how many of those meetings 11 did you have? 12 A. Here again, we -- the meeting of the week after the 13 4th of July holiday I think we did not have, because I 14 went the week before and I think the governor was on 15 Mackinac the week after so I don't know if we had a 16 meeting then. That would leave you said July 17? 17 Q. July 3 to July 17. 18 A. Okay, so that would leave roughly another week or two. 19 There may have been a meeting the following week and 20 I'm trying to recall if any attorneys were at that 21 meeting. There was probably a meeting the following 22 week or the week thereafter. There may have been 23 attorneys at one of those meetings from the governor's 24 staff. 25 Q. How many meetings did you participate in between July</p>



<p style="text-align: right;">Page 217</p> <p>1 3 and July 17 at which -- with the governor at which 2 attorneys were present as opposed to meetings with the 3 governor where attorneys were not present? 4 A. I think we only had one or two meetings and attorneys 5 were present at either one or both of those meetings. 6 Excluding Treasurer Dillon. I'm talking about 7 attorney attorneys, not lawyers. 8 Q. Who drafted your July 16th letter? Was that you? 9 A. No, I got a draft and I edited it. 10 Q. Who prepared the draft for you? 11 A. I think it was a number of folks. It was -- I 12 forgot -- 13 Q. Was it Jones Day? 14 A. It was more than likely Jones Day, yes, restructuring 15 guys. 16 Q. Did you direct the draft be prepared? 17 A. Yes, we -- 18 MR. SHUMAKER: You can say. You can 19 testify to that. 20 A. Without discussing exactly what was said, yes, I did. 21 Q. What was the date that you gave Jones Day that 22 direction? 23 A. I think that direction was either to start getting the 24 letter in shape that Friday, I'm not sure, either that 25 preceding week or over the weekend. Yes.</p>	<p style="text-align: right;">Page 219</p> <p>1 A. I believe -- well, when you say the governor's office, 2 that includes the treasurer? 3 Q. Yes. 4 A. Yes, I believe so. 5 Q. The state? 6 A. The state, yes, I believe so. 7 Q. How many of those meetings are you aware of where you 8 did not participate? 9 A. I -- 10 MR. SHUMAKER: Object to foundation, but -- 11 A. Where any meetings I didn't. There were -- the 12 investment bankers, for instance, will talk with 13 treasury from time to time about a number of matters 14 and I'm sure that I wasn't on all of those 15 conversations. And my legal team might talk with the 16 governor's attorney on various matters and I'm pretty 17 confident I wasn't involved in all those discussions 18 either. So it's not like it happened every day or it 19 was happening every half hour, but I'm sure there were 20 discussions between them that I was either not 21 involved with or aware of. 22 Q. Did any of those discussions between either the 23 investment bankers directly or your counsel and the 24 state governor's office or whomever involve 25 discussions with regard to the filing of the Chapter 9</p>
<p style="text-align: right;">Page 218</p> <p>1 Q. But after the commencement -- but that would have been 2 after July 3? 3 A. Yes, yes, it was after July 3. 4 Q. Did you advise the governor that you had started the 5 process of drafting that letter? 6 A. I don't recall -- 7 MR. SHUMAKER: If -- if -- if the 8 communications with the governor were with counsel 9 present, then I don't want you to reveal what was 10 said. 11 THE WITNESS: Okay. Okay. 12 MR. SHUMAKER: If at another meeting where 13 there was not counsel present, that's a different 14 story. 15 THE WITNESS: Right. 16 A. Within that time frame, because I believe that was a 17 weekend, I do not recall communications with the 18 governor or communications with the governor where 19 counsel was not present. There may have been a 20 discussion with the governor -- no, I don't recall an 21 independent discussion with the governor. 22 Q. In addition to conversations in which you participated 23 in, were there conversations between your consultants 24 and the governor's office and/or his counsel between 25 July 3 and July 17?</p>	<p style="text-align: right;">Page 220</p> <p>1 for Detroit and/or the timing of that filing? 2 MR. SHUMAKER: Object to form. 3 A. Yes, they probably did. 4 Q. When you say they probably did, were you getting 5 reports from your investment banker and your counsel 6 with regard to the conversations they were having with 7 the governor and other representatives of the state? 8 A. Not necessarily every -- not necessarily every 9 conversation, but generally speaking, so I was getting 10 reports, but I cannot testify that I was privy to 11 every conversation that everyone either on legal side 12 or the investment side -- banking side or them 13 together had. 14 Q. When did you first start thinking that the timing for 15 the Chapter 9 filing was going to be sooner rather 16 than later? 17 A. As opposed to? 18 Q. Let me rephrase. 19 When did you decide that the timing of the 20 Chapter 9 filing should be July 18th or July 19th? 21 A. Well, I didn't. I decided to make the request and my 22 intent was to have the ability to file available and 23 possibly executed as soon as I got it. It was without 24 talking or waiving privileges from my counsel or 25 counsel and investment bankers, the concerns about us</p>

<p style="text-align: right;">Page 221</p> <p>1 losing control or being put in a situation because of 2 the ongoing litigation where I would not be able to 3 discharge my duties in an orderly fashion, in a 4 comprehensive matter to put the city on a sustainable 5 footing because of the litigation grew throughout June 6 and it was made clear to me that my desire to try to 7 continue to engage in discussions was running the risk 8 of putting my obligations under the statute in peril 9 and I think I was even counseled that I was being 10 irresponsible. 11 Q. When did you first advise or have your consultants 12 first advise the governor or anybody affiliated with 13 the state that you were starting to draft your July 14 16th request? 15 A. Outside of attorney-client communications? 16 MR. SHUMAKER: No. 17 Q. No, no, I'm talking about when did you tell the 18 governor. I'm not sure it's you or -- 19 A. But I may have -- 20 Q. -- or I'm not sure if it's your counsel who made that 21 request for you or your investment banker who made 22 that request for you -- 23 MR. SHUMAKER: Objection. 24 A. When did I transmit the request? 25 Q. Yes.</p>	<p style="text-align: right;">Page 223</p> <p>1 Merrill Lynch commensurate with that day. One of the 2 insurers had begun to interfere with that process from 3 June until July. So we were getting hit on all sides 4 both on the creditors' side but also on, for lack of a 5 better word, the labor side with risk and threats and 6 lawsuits and were sued three times in June -- well, 7 sued once, one joined in the suit and sued again I 8 think on the 16th and also the Syncora of threats for 9 which we had to file litigation where I was counseled 10 that given the chaos in a sense that was erupting -- 11 MR. SHUMAKER: Hold on right there. 12 THE WITNESS: Okay. 13 MR. SHUMAKER: What you were counseled, I 14 want to make sure you're not going into an area that's 15 protected by the privilege. 16 THE WITNESS: Okay. 17 Q. You can give me your understanding. You can't tell me 18 what -- 19 A. As I said before, my understanding was I was at risk 20 of losing the ability to try to pursue a restructuring 21 in an orderly fashion. 22 Q. Wasn't the Syncora issue settled sometime in prior to 23 the Chapter 9 filing, though? 24 A. No. 25 Q. The risk that you felt from the Webster/Flowers I</p>
<p style="text-align: right;">Page 222</p> <p>1 MR. SHUMAKER: Object to the form. 2 Q. Let me rephrase it. 3 When did somebody on behalf of the 4 Emergency Manager advise somebody on behalf of the 5 state that the Emergency Manager and his team was 6 starting to draft the July 16 request? 7 THE WITNESS: Can I answer that if it's to 8 an attorney at the governor? 9 MR. SHUMAKER: When. 10 THE WITNESS: Oh, when. 11 MR. SHUMAKER: Yeah. 12 A. Oh, that was probably Monday. Monday, the 16th. 13 Q. You testified previously that you were concerned you 14 wouldn't be able to carry out your obligations in an 15 orderly fashion. What do you mean by that? 16 A. The lawsuits that were being filed were requesting -- 17 my understanding from reading them what I was informed 18 were requesting injunctions against me with any 19 options I might have available including the Chapter 9 20 filing and were refocusing our attention on litigation 21 risk. They were also -- it wasn't just the -- what -- 22 for lack of a better word what we'll call the Flowers 23 and related litigations, we were also in -- we had -- 24 had defaulted on the cops' payment on June 14th and 25 had announced a settlement with Bank of America,</p>	<p style="text-align: right;">Page 224</p> <p>1 think what you referred to as three litigations -- 2 A. Uh-huh. 3 Q. -- when did you communicate that risk to the governor 4 or the state or when did somebody communicate that 5 risk on behalf of the Emergency Manager to the 6 governor or the state? 7 MR. SHUMAKER: Objection, foundation, form. 8 A. Probably the preceding week of the 16th or maybe even 9 a week before that. Let me -- 10 Q. So when you say the preceding week, just looking at a 11 calendar for a minute, what was the date there? 12 A. Can I look at the calendar on my checkbook without it 13 being classified as an exhibit? 14 Q. No, I won't ask you. 15 A. I just want to make sure I'm not in trouble. Okay. I 16 don't want you to see my checkbook. It would make you 17 cry. 18 MR. SHUMAKER: July 8th was a Monday. 19 THE WITNESS: Yeah, I'm -- 20 Q. So was it -- 21 A. It was probably the week of July. 22 Q. July 8th? I know I can't see either. 23 A. I -- yeah, it was probably that week, July 8th week. 24 Q. Okay, so -- 25 A. It may have been -- the reason I'm hesitating, as I</p>

<p style="text-align: right;">Page 225</p> <p>1 said before, I think my family and I were out that</p> <p>2 preceding Friday, Saturday and Sunday and we actually</p> <p>3 ran into the governor's family coming onto the island</p> <p>4 I believe that Sunday so I don't think we had that</p> <p>5 meeting that week so it may have actually been the</p> <p>6 following week.</p> <p>7 Q. Meaning sometime during the week of July 15th?</p> <p>8 A. No, or the end of --</p> <p>9 Q. So it was during --</p> <p>10 A. -- the week of the 8th. The 8th. But I did not have</p> <p>11 a meeting with the governor that week.</p> <p>12 Q. Well --</p> <p>13 A. Now that I look at the calendar.</p> <p>14 Q. Okay.</p> <p>15 A. Okay.</p> <p>16 Q. So just to clarify, it appears more likely than not</p> <p>17 that you did not have a meeting between you and the</p> <p>18 governor the week of July 8th but your understanding</p> <p>19 is that during the week of July 8th, probably the</p> <p>20 latter part of that week, somebody on behalf of the</p> <p>21 Emergency Manager let the governor or the state know</p> <p>22 that you were drafting or starting to draft the July</p> <p>23 16th request and that you had concerns about the</p> <p>24 Flower s/Webster litigations?</p> <p>25 A. Yeah, and here again, I don't know if so much concerns</p>	<p style="text-align: right;">Page 227</p> <p>1 A. Yes, July 18th.</p> <p>2 Q. -- did Lamont Satchel have any meetings with the labor</p> <p>3 organizations?</p> <p>4 A. Do I know? I know that during this time the CBAs,</p> <p>5 some of the City's Collective Bargaining Agreements</p> <p>6 were expiring and I believe that Lamont did have</p> <p>7 meetings during that time not just related with that</p> <p>8 but with other issues as well.</p> <p>9 Q. During your prior testimony -- and I apologize for</p> <p>10 skipping around, but I don't want to duplicate what's</p> <p>11 already been done.</p> <p>12 A. That's okay.</p> <p>13 Q. You spoke about Jones Day doing a presentation or</p> <p>14 interview to the state back in January, the end of</p> <p>15 February.</p> <p>16 A. Yeah, the documents I was shown this morning would</p> <p>17 make it January.</p> <p>18 Q. And with whom did Jones Day meet at that time, who</p> <p>19 physically was in the room?</p> <p>20 A. Treasurer Dillon, then CFO Jack Martin, Rich Baird,</p> <p>21 Kriss Andrews, Ken Buckfire and one of his colleagues.</p> <p>22 Q. Any other outside consultants besides Miller Buckfire?</p> <p>23 A. Well, Rich Baird is on contract to the state, but I</p> <p>24 don't -- I think -- I don't recall if Ernst & Young</p> <p>25 was there. There was a member of the financial</p>
<p style="text-align: right;">Page 226</p> <p>1 -- it wasn't like we were focused on Flowers/Webster,</p> <p>2 we were saying in the universe of the world that</p> <p>3 litigation, whatever name, and the Syncora struggle,</p> <p>4 were creating a situation that was untenable and</p> <p>5 threatening what we had wanted to do.</p> <p>6 Q. Lamont Satchel.</p> <p>7 A. Yes.</p> <p>8 Q. He's your -- what's his title?</p> <p>9 A. He is the, I believe, labor negotiator for the City.</p> <p>10 Q. And what's his scope of authority?</p> <p>11 A. His scope of authority initially as labor negotiator</p> <p>12 was to oversee, monitor and lead labor relationships</p> <p>13 with the City and its labor partners.</p> <p>14 Q. And to whom -- and who is his direct report?</p> <p>15 A. At this point Lamont's direct report -- well, it is --</p> <p>16 the org chart is being revised, but his direct report</p> <p>17 would have been to the chief operating officer.</p> <p>18 Q. And who was that?</p> <p>19 A. At that time it would have been Gary Brown.</p> <p>20 Q. And who is it today?</p> <p>21 A. It still goes through Gary Brown, but I am intimately</p> <p>22 involved with the process.</p> <p>23 Q. And do you know whether or not during the month of</p> <p>24 June prior and up through -- starting with June 1</p> <p>25 through July 18th --</p>	<p style="text-align: right;">Page 228</p> <p>1 advisory board.</p> <p>2 Q. Do you recall who that was?</p> <p>3 A. As soon as you said that, it went out of my head.</p> <p>4 Very, very sharp, as -- Ken -- Ken Whipple was there.</p> <p>5 I'm just going through the room. Andy, Ken Whipple,</p> <p>6 Jack Martin, Kriss Andrews, Rich Baird. That's all</p> <p>7 that I recall off the top of my head and Miller</p> <p>8 Buckfire and one of his colleagues.</p> <p>9 Q. And who was there from Jones Day?</p> <p>10 A. Aaron Agenbroad -- they were all partners. Aaron</p> <p>11 Agenbroad, Bruce Bennett, Heather Lennox, myself,</p> <p>12 Corinne Ball, Steve Brogan, and I think that was -- I</p> <p>13 think that was our team.</p> <p>14 Q. What was Aaron's last name again?</p> <p>15 A. Agenbroad, A-G-E-N-B-R-O-A-D.</p> <p>16 Q. What department is he in?</p> <p>17 A. Aaron Agenbroad is a partner in charge of the</p> <p>18 San Francisco office. He is in the labor.</p> <p>19 Q. He's in the labor group?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Corinne, all the rest of the attorneys on the team</p> <p>22 were bankruptcy?</p> <p>23 A. No. Bruce Bennett is in the bankruptcy group.</p> <p>24 Corinne Ball was in the bankruptcy group. Heather</p> <p>25 Lennox is in the structured finance and bankruptcy.</p>

<p>Page 229</p> <p>1 Steve Brogan is managing partner for the firm.</p> <p>2 Q. But he was intimately involved in Chrysler; correct?</p> <p>3 A. Steve Brogan?</p> <p>4 Q. Yes.</p> <p>5 A. Steve Brogan oversaw Chrysler representation generally</p> <p>6 but he wasn't day-to-day counsel. Actually I think</p> <p>7 you were. And I'm trying to think who else was there</p> <p>8 if anybody. There was a pitch book, but that's who I</p> <p>9 recall.</p> <p>10 Q. Turning back to Orr 6 for a minute.</p> <p>11 MR. SHUMAKER: What is that, counsel?</p> <p>12 Which one?</p> <p>13 A. Is that the letter or the --</p> <p>14 Q. It's the summary of partnership, Governor of Michigan,</p> <p>15 Mayor of Detroit, Emergency Manager.</p> <p>16 A. Okay.</p> <p>17 MR. SHUMAKER: Thank you.</p> <p>18 Q. I'm on the page that ends 464.</p> <p>19 MR. SHUMAKER: 464? I'm sorry, I'm not --</p> <p>20 MS. LEVINE: The Bates stamp number 464.</p> <p>21 A. 464.</p> <p>22 MR. SHUMAKER: Orr 4 or 7 are you looking</p> <p>23 at?</p> <p>24 MS. LEVINE: Oh, sorry.</p> <p>25 THE WITNESS: Orr 7?</p>	<p>Page 231</p> <p>1 6, there's the to the extent permitted by law is a</p> <p>2 different typeset. And my understanding there was --</p> <p>3 that this was I think in the document of emails it</p> <p>4 talks about it being an aspirational agreement but not</p> <p>5 requirement and I just wanted to reserve the right of</p> <p>6 the manager to exercise his duties as permitted by law</p> <p>7 as he saw fit.</p> <p>8 Q. What were the -- what was your understanding of what</p> <p>9 the labor, retiree and benefit initiatives were to be?</p> <p>10 A. Well, there were some initiatives that were ongoing</p> <p>11 and at this time there were the reductions, there was</p> <p>12 an Act 312 award that had come up for DPOA I believe</p> <p>13 and there were ongoing issues regarding the Act 312s</p> <p>14 for the other police divisions, but I know there were</p> <p>15 -- I know there were other initiatives going on, but</p> <p>16 this document at this time was not intended to be a</p> <p>17 detailed recitation of what those initiatives were.</p> <p>18 It was generally, as I understood it, to be a -- based</p> <p>19 off the consent agreement.</p> <p>20 Q. Were these to be cost cutting initiatives?</p> <p>21 A. It wasn't -- here again, this was aspirational. It</p> <p>22 wasn't clear at this time as to what those initiatives</p> <p>23 were going to be.</p> <p>24 Q. Were these initiatives going to include cost cutting</p> <p>25 initiatives?</p>
<p>Page 230</p> <p>1 MS. LEVINE: Yes, I guess so.</p> <p>2 THE WITNESS: Yes.</p> <p>3 Q. Who drafted this document? It says draft date</p> <p>4 2/21/2013.</p> <p>5 MR. SHUMAKER: Objection, foundation.</p> <p>6 A. Yeah, I don't know who drafted this document. I think</p> <p>7 the email chain shows this was a document that was</p> <p>8 forwarded to me and I think there's -- in an email</p> <p>9 this morning I asked for it to be sent to me in a Word</p> <p>10 format. I don't know who drafted it.</p> <p>11 Q. And did you comment on this document?</p> <p>12 A. Yes, I did.</p> <p>13 Q. Was it ever reduced to a final form?</p> <p>14 A. I don't recall seeing a final form, but there's</p> <p>15 nothing signed, but this may be the final form, if</p> <p>16 there is such a thing.</p> <p>17 Q. Paragraph 7 reads --</p> <p>18 A. Yes.</p> <p>19 Q. -- labor, retiree and benefit initiatives will be</p> <p>20 pursued jointly by the mayor and the manager to the</p> <p>21 extent permitted by law.</p> <p>22 A. Yes.</p> <p>23 Q. What's your understanding of what that means?</p> <p>24 A. That was under -- the extent permitted by law was put</p> <p>25 in there, I believe, by me. As you see in paragraph</p>	<p>Page 232</p> <p>1 A. They might have included cost cutting initiatives,</p> <p>2 yes.</p> <p>3 Q. Was it your understanding or intent in your world as</p> <p>4 Emergency Manager or at the time EFM?</p> <p>5 A. At this time?</p> <p>6 Q. Yes.</p> <p>7 A. No. This was handed to me, I had -- as I said I think</p> <p>8 in the prior email chain, I was doing my due diligence</p> <p>9 at this time. I had not made any decision regarding</p> <p>10 cost cutting initiatives.</p> <p>11 Q. On -- we had some discussion earlier with regard to</p> <p>12 some of your thinking just prior to the filing, that</p> <p>13 first and second or second and third week of July.</p> <p>14 A. Right.</p> <p>15 Q. And you raised as one of the concerns, and I</p> <p>16 understand that there is Syncora and a lot of other</p> <p>17 things going on, but you raised as one of concerns</p> <p>18 that if certain orders were entered in connection with</p> <p>19 the Webster/Flowers litigation, that you would lose</p> <p>20 the ability to do some of the things that you wanted</p> <p>21 to do as the Emergency Manager.</p> <p>22 A. Yes.</p> <p>23 Q. What were you afraid you were going to lose the</p> <p>24 ability to do?</p> <p>25 MR. SHUMAKER: Object to the form. I</p>



<p>Page 233</p> <p>1 object to the summary.</p> <p>2 A. Let me say this. It wasn't just limited to labor</p> <p>3 issues. I mean, we were trying to --</p> <p>4 Q. No, no, I understand that, but with regard to the</p> <p>5 labor issues.</p> <p>6 A. Oh, labor issues?</p> <p>7 Q. Yeah.</p> <p>8 A. We wanted to -- and they would include cost cutting</p> <p>9 measures perhaps, pensions and benefits, but also</p> <p>10 streamlining job efficiencies, moving into the CETs.</p> <p>11 If you're talking about just labor --</p> <p>12 Q. Narrowly and specifically, what were you afraid you</p> <p>13 were not going to be able to do if the orders that</p> <p>14 were being sought were entered or enforced from the</p> <p>15 Webster and Flowers litigation?</p> <p>16 A. Yeah, everything. We were concerned that the orders</p> <p>17 had the possibility of delaying the overall</p> <p>18 operational financial restructuring that we were</p> <p>19 pursuing because they're all interrelated and if we</p> <p>20 had the same cash spend, for instance, on some issues</p> <p>21 that we did on others, then even the savings we were</p> <p>22 trying to get in Syncora and others we might not be</p> <p>23 able to service, so we were concerned about</p> <p>24 everything. It wasn't just one specific issue.</p> <p>25 MS. LEVINE: Can I have a short break?</p>	<p>Page 235</p> <p>1 Q. Your counsel has asserted a joint defense?</p> <p>2 A. Yes.</p> <p>3 MR. SHUMAKER: Common interest.</p> <p>4 Q. Common interest. Just want to clarify to make sure I</p> <p>5 understand. We're obviously reserving our rights, but</p> <p>6 I want to understand whether you're claiming common</p> <p>7 interest with regard to discussions relating to the</p> <p>8 entire Chapter 9 filing or whether you are claiming</p> <p>9 common interest just with regard to the state court</p> <p>10 litigation?</p> <p>11 MR. SHUMAKER: Well, it would be to both.</p> <p>12 I mean, the common interest agreement captures what</p> <p>13 Mr. Orr's been doing since he became Emergency Manager</p> <p>14 where there was a common interest between the state</p> <p>15 and the Emergency Manager's office. So both of those</p> <p>16 would fall within to the extent that counsel was</p> <p>17 involved in the communications.</p> <p>18 MS. LEVINE: Okay.</p> <p>19 MR. SHUMAKER: If that helps.</p> <p>20 MS. LEVINE: Mr. Orr was not a defendant in</p> <p>21 the Flowers and Webster litigation so I just want to</p> <p>22 understand what the basis is for claiming joint</p> <p>23 defense or a common interest agreement between July 3</p> <p>24 and I think it was July 17 or 18 when the retirement</p> <p>25 system named Mr. Orr as a party.</p>
<p>Page 234</p> <p>1 THE WITNESS: Sure.</p> <p>2 MR. SHUMAKER: Sure.</p> <p>3 THE VIDEOGRAPHER: Going off the record at</p> <p>4 4:12 p.m.</p> <p>5 (A brief recess was taken.)</p> <p>6 THE VIDEOGRAPHER: We're back on the record</p> <p>7 at 4:23 p.m.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Mr. Orr, was one of the concerns with regard to the</p> <p>10 Flowers and Webster litigation that 436 would be found</p> <p>11 unconstitutional by the state court?</p> <p>12 MR. SHUMAKER: Object to the form.</p> <p>13 A. Not -- not particularly. Frankly, it wasn't more of a</p> <p>14 concern that ultimately the statute be found</p> <p>15 unconstitutional, no. It was more of a concern of</p> <p>16 just being caught up in the uncertainty of litigation</p> <p>17 and appeals.</p> <p>18 Q. Then let me put a finer point on it. Were you</p> <p>19 concerned that if in fact 436 were found</p> <p>20 unconstitutional at the state court level, the lower</p> <p>21 level court --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- that there would be the delay in the time to run</p> <p>24 through the appeal process on that issue?</p> <p>25 A. Yes, that was one of the concerns.</p>	<p>Page 236</p> <p>1 MR. SHUMAKER: Well, the common interest is</p> <p>2 there's a common interest between the state and the</p> <p>3 Emergency Manager's office to a whole number of things</p> <p>4 regarding the requests and the provision of legal</p> <p>5 advice. So if you're talking about any possible</p> <p>6 communications between Mr. Orr and the governor's</p> <p>7 office where counsel was present about any of the</p> <p>8 subjects you name, whether it be the Flowers or the</p> <p>9 Webster or the Chapter 9 filing, we will assert the</p> <p>10 privilege. I -- your -- the fact that Mr. Orr was not</p> <p>11 a defendant in the first two actions doesn't change</p> <p>12 the assertion of the privilege that we're making.</p> <p>13 MS. LEVINE: Okay, slightly different</p> <p>14 topic.</p> <p>15 Q. Are you aware of a coalition among certain of the</p> <p>16 City's unions put together in order to try and deal</p> <p>17 with some of the restructuring issues with regard to</p> <p>18 labor that you've been focused on?</p> <p>19 A. A coalition? Can you please explain? Informal</p> <p>20 coalition or the retiree committee or --</p> <p>21 Q. Not the retire committee. A coalition of unions with</p> <p>22 regard to trying to deal with some of the labor issues</p> <p>23 that you --</p> <p>24 A. Under the AFSCME umbrella?</p> <p>25 Q. No, no, no.</p>



<p style="text-align: right;">Page 237</p> <p>1 A. Or separate union? I'm trying to -- I'm trying to 2 understand. 3 Q. Well, I think your answer indicates to me that perhaps 4 the answer is no. 5 A. Yeah. Okay. 6 MS. LEVINE: I have no further questions. 7 MR. SHUMAKER: Thank you, counsel. 8 THE VIDEOGRAPHER: Going off the record at 9 4:27 p.m. 10 (Discussion held off the record.) 11 THE VIDEOGRAPHER: We are back on the 12 record at 4:29 p.m. 13 EXAMINATION 14 BY MR. DeCHIARA: 15 Q. Good afternoon, Mr. Orr. 16 A. Good afternoon. 17 Q. My name is Peter DeChiara. I'm an attorney with the 18 law firm of Cohen Weiss & Simon, LLP. We represent 19 the United Auto Workers in this proceeding. 20 Prior to January of 2013 were you 21 acquainted with the governor, Rick Snyder? 22 A. Personally acquainted? I knew he was governor of 23 Michigan but -- 24 Q. Personally acquainted. 25 A. Remotely. We overlapped in law school.</p>	<p style="text-align: right;">Page 239</p> <p>1 Q. What about with Andrew Dillon? Same question, same 2 time period. 3 A. Right. No, I don't think we talked at that 4 specificity. 5 Q. Same question for Mr. Baird? 6 A. No, no, not with Rich Baird. 7 Q. Before you were appointed EM did you speak with anyone 8 at Jones Day about what could or should be done about 9 Detroit's pension liabilities? 10 A. I'm trying to think back. Before my appointment? Did 11 I speak with anyone about pension liabilities? 12 Q. Anyone at Jones Day, yes. 13 A. Anyone at Jones Day? I may have, but I don't recall 14 specifically. I may have. Um, I think I probably 15 did, yes, I think I probably did. 16 Q. Do you recall who you may have spoken to? 17 A. No. It could have been -- no, I don't recall who I 18 spoke to. It could have been a number of people. 19 Q. Did you speak to Corinne Ball? 20 A. Corinne Ball, it may have been Corinne. 21 Q. Do you recall any discussions you had with her about 22 that topic? 23 A. I don't. 24 Q. What about the -- what's the name of the managing 25 partner?</p>
<p style="text-align: right;">Page 238</p> <p>1 Q. Did you maintain -- since law school did you maintain 2 any friendship or other social connection? 3 A. Hadn't seen him since 1982. 4 Q. Until -- 5 A. Until sometime earlier this year in March. 6 Q. Did you have any professional or other dealings with 7 him between the time you were in law school until you 8 saw him in connection with -- until after January 9 2013? 10 A. No, none that I'm aware of. 11 Q. Before you were appointed as Emergency Manager, did 12 you have occasion to speak to the governor about what 13 could or should be done about Detroit's pension 14 liabilities? 15 A. Before I was appointed? 16 Q. Yes. 17 A. No, I don't believe the governor and I talked at that 18 level of detail. 19 Q. Okay. Same question for any of the governor's senior 20 staff. Did you speak to any of the governor's senior 21 staff before you were appointed as EM regarding what 22 could or should be done about Detroit's pension 23 liabilities? 24 A. No, I don't recall having discussions of that 25 specificity.</p>	<p style="text-align: right;">Page 240</p> <p>1 A. Steve Brogan? 2 Q. Did you speak to him about that topic? 3 A. No, we didn't speak at that level of specificity, no. 4 Q. Anyone else in the bankruptcy group that you worked 5 with at Jones Day about that topic? 6 A. About that specific topic? 7 Q. Right, about what could or should be done about -- 8 A. Could or should be done. 9 Q. -- about Detroit's pension liabilities? 10 A. I don't recall having that level of specificity, no. 11 Q. You've testified earlier today about a -- what I'll 12 call a pitch meeting that Jones Day made to the City 13 in order to be considered as counsel for the City. Do 14 you recall that testimony? 15 A. Yes. 16 Q. Okay. Apart from that pitch meeting, prior to 17 Jones Day being retained by the City, do you know 18 whether there were any communications by Jones Day to 19 the City about what could or should be done about 20 Detroit's pension liabilities? 21 A. To the City? 22 Q. Yes. 23 A. None that I'm aware of. 24 Q. What about to the state -- I'm sorry, go ahead. 25 A. Well, I had two meetings with Mayor Bing, but I don't</p>



<p style="text-align: right;">Page 241</p> <p>1 think we discussed pensions.</p> <p>2 Q. Do you recall what you did discuss?</p> <p>3 A. Just generally the state of the City, the difficulties</p> <p>4 that he had encountered, they were more getting to</p> <p>5 know each other meetings. There wasn't any plan being</p> <p>6 worked out or any detailed discussions.</p> <p>7 Q. Other than the pitch book that you testified about</p> <p>8 earlier, prior to Jones Day being retained by the</p> <p>9 City, do you know whether Jones Day provided or shared</p> <p>10 with the City any analysis, memos, reports or any</p> <p>11 documents of that sort with the City concerning the</p> <p>12 issue of Detroit's pension liabilities?</p> <p>13 A. Other than the pitch book?</p> <p>14 Q. Yes.</p> <p>15 A. None that I'm aware of.</p> <p>16 Q. Do you know -- before Jones Day was retained by the</p> <p>17 City, do you know whether Jones Day spoke to anyone at</p> <p>18 the state including the governor and his senior staff</p> <p>19 about what could or should be done about Detroit's</p> <p>20 pension liabilities?</p> <p>21 A. Prior to their retention?</p> <p>22 Q. Yes.</p> <p>23 A. I think I need to explain my answer. Between the</p> <p>24 pitch which occurred I believe now on the end of</p> <p>25 January until sometime in -- at some point in</p>	<p style="text-align: right;">Page 243</p> <p>1 Detroit's pension liabilities --</p> <p>2 A. Right.</p> <p>3 Q. -- is the answer to your (sic) question you're not</p> <p>4 aware of any?</p> <p>5 A. Other than the pitch book?</p> <p>6 Q. Yes.</p> <p>7 A. I'm not aware of any.</p> <p>8 Q. Okay. Are you aware of any reports or presentations</p> <p>9 or memos or analysis presented by Jones Day to the</p> <p>10 state concerning what could or should be done about</p> <p>11 Detroit's pension liabilities that occurred before you</p> <p>12 became EM?</p> <p>13 A. No, I don't recall any.</p> <p>14 Q. Are you aware of any that have occurred since you've</p> <p>15 become EM?</p> <p>16 A. Oh, I think, yes. I mean, I think there have been</p> <p>17 presentations to the state about the City's pension</p> <p>18 obligations, yes.</p> <p>19 Q. Made by Jones Day?</p> <p>20 A. Made by Jones Day and Miller Buckfire and others, yes,</p> <p>21 yes.</p> <p>22 Q. Okay. And what are they? Can you tell me what those</p> <p>23 are?</p> <p>24 A. Um --</p> <p>25 MR. SHUMAKER: Objection, we're going to</p>
<p style="text-align: right;">Page 242</p> <p>1 February, I recused myself from the retention, the</p> <p>2 pitch process, so during the time that I was involved</p> <p>3 for the few weeks, I don't know of anything; I</p> <p>4 wouldn't know nothing after I recused myself.</p> <p>5 Q. Okay, when was Jones Day retained by the City? Do you</p> <p>6 know what date?</p> <p>7 A. I think they were ultimately selected prior to the</p> <p>8 time I got there. I remember the -- I think it was</p> <p>9 the first couple of weeks it went through city</p> <p>10 council, I stepped out of that process as Emergency</p> <p>11 Manager, it then went to the mayor, I think or vice</p> <p>12 versa, he approved and went to council, council</p> <p>13 approved it, there were press reports of that time</p> <p>14 frame, I believe it was approximately March -- mid</p> <p>15 March.</p> <p>16 Q. Okay.</p> <p>17 A. Or was it -- no, no, no. They had been selected in</p> <p>18 March, but I don't think city council approved it</p> <p>19 until later. So I think I had been selected and</p> <p>20 retained, but it had to go to the city council</p> <p>21 certification and approval process for some period of</p> <p>22 time after that.</p> <p>23 Q. Okay. And since I had earlier asked you whether you</p> <p>24 were aware of communications by Jones Day to the state</p> <p>25 concerning what could or should be done about</p>	<p style="text-align: right;">Page 244</p> <p>1 get into the same area that's covered by the common</p> <p>2 interest agreement so if you're going to -- and ask</p> <p>3 him about what he knows from a general level, but if</p> <p>4 it's what was the specific content of the</p> <p>5 communication, we're going to assert the privilege and</p> <p>6 I'm going to instruct him not to answer. So subject</p> <p>7 to that admonition you can answer.</p> <p>8 Q. Okay, so without getting into the substance of any</p> <p>9 documents, can you answer the question?</p> <p>10 A. Yes. Without waiving any privilege, generally there</p> <p>11 were discussions about -- and this may have included</p> <p>12 attorneys and investment advisors as well as attorneys</p> <p>13 and representatives of the state. Without discussing</p> <p>14 what was said, generally the pension obligation and</p> <p>15 healthcare obligation and the City's lack of funding</p> <p>16 to meet them as discussed, you know, I'll just</p> <p>17 reference the June 14th presentation as that type of</p> <p>18 discussion.</p> <p>19 Q. Were these discussions that occurred prior to the</p> <p>20 issuance of the -- prior to June 14th?</p> <p>21 A. Yes, I believe they may have been, yes.</p> <p>22 Q. Did the state participate in the formulation of the</p> <p>23 proposal that is the June 14th proposal?</p> <p>24 A. When you say participate, I want to be careful. You</p> <p>25 know, it generally may have been discussed at a high</p>



<p>Page 245</p> <p>1 level but the state to the best of my knowledge didn't</p> <p>2 participate in any authorship.</p> <p>3 Q. Okay, I'm not talking about the drafting of the</p> <p>4 document --</p> <p>5 A. Yeah, yeah.</p> <p>6 Q. -- but the formulation of the actual ideas or</p> <p>7 proposals that are contained in the document.</p> <p>8 A. No.</p> <p>9 Q. Did the state have input into that?</p> <p>10 A. No. The -- well, let me say it this way without</p> <p>11 talking about what was said. Generally the -- some of</p> <p>12 the advisors have been in the City for years if not</p> <p>13 months and have been reviewing this issue so I'm</p> <p>14 talking about from the time I was there and what I'm</p> <p>15 aware of. Generally the process once I became</p> <p>16 involved was we, meaning my immediate restructuring</p> <p>17 team, reviewed the issues and prepared proposals and</p> <p>18 then may have discussed them at a high level with the</p> <p>19 state, but as I said, there wasn't authorship in those</p> <p>20 proposals at the state level to the best of my</p> <p>21 knowledge.</p> <p>22 Q. Okay. Let me refer you to the June 14th proposal,</p> <p>23 which is Exhibit 9 of your deposition.</p> <p>24 A. Yes.</p> <p>25 Q. And let me refer you in particular to page 109.</p>	<p>Page 247</p> <p>1 Q. At the time the City filed for bankruptcy, was it your</p> <p>2 view that there had to be significant cuts in accrued</p> <p>3 vested pension amounts for both active and currently</p> <p>4 retired persons?</p> <p>5 A. Yes.</p> <p>6 Q. And is it still -- still your view today?</p> <p>7 A. Yes, based upon our analysis, yes.</p> <p>8 Q. This conclusion that there must be significant cuts in</p> <p>9 accrued vested pension amounts for both active and</p> <p>10 currently retired persons, was that assertion or that</p> <p>11 idea or that notion discussed by you with the governor</p> <p>12 at any time before June 14th, 2013?</p> <p>13 A. Outside of meetings with attorneys?</p> <p>14 MR. SHUMAKER: Outside of meetings or calls</p> <p>15 with attorneys present.</p> <p>16 Q. Yeah, I'm not looking to infringe your attorney-client</p> <p>17 privilege.</p> <p>18 A. I know. I just don't recall all of the meetings. It</p> <p>19 may have been discussed outside those meetings.</p> <p>20 Q. Well, do you have a recollection?</p> <p>21 A. I do not have a recollection of specific discussions.</p> <p>22 Q. Just so I understand your testimony, are you saying it</p> <p>23 was -- it may have been discussed but you're not sure</p> <p>24 whether or not it was discussed in meetings that were</p> <p>25 outside the attorney-client privilege? Is that your</p>
<p>Page 246</p> <p>1 A. Original 109?</p> <p>2 Q. Yeah, not the stamp.</p> <p>3 A. Not the Bates stamp, yes.</p> <p>4 Q. Right. There's the third bullet point from the bottom</p> <p>5 of the page. You can read that. It's a two line</p> <p>6 bullet point, you can read it, but what I want to</p> <p>7 focus on is the language that there must be</p> <p>8 significant cuts in accrued benefit pension amounts</p> <p>9 for both active and currently retired persons. Do you</p> <p>10 see that language?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And did you believe that what I just read out</p> <p>13 loud, that statement, to be true as of June 14th? Did</p> <p>14 you believe that there had to be, the cuts that are</p> <p>15 referred to there?</p> <p>16 A. Yes, based upon our analysis, yes.</p> <p>17 Q. And did you believe that at the time that the City</p> <p>18 filed for bankruptcy?</p> <p>19 A. Did I believe that at the time the City filed for</p> <p>20 bankruptcy?</p> <p>21 Q. At the time the City filed for bankruptcy --</p> <p>22 A. Yes.</p> <p>23 Q. Let me just finish the question for the clarity of the</p> <p>24 record.</p> <p>25 A. I'm sorry.</p>	<p>Page 248</p> <p>1 testimony?</p> <p>2 A. Yes. It -- well, to clarify, I think it -- some</p> <p>3 concept probably was discussed, but I'm not sure it</p> <p>4 was discussed outside of attorney-client meetings --</p> <p>5 Q. Okay.</p> <p>6 A. -- attorney-client privilege. I want to be clear.</p> <p>7 Q. Again, without infringing attorney-client privilege,</p> <p>8 did the state, and when I say the state, I mean the</p> <p>9 governor, his senior staff, Mr. Dillon, his staff,</p> <p>10 ever speak to you or your team asserting that there</p> <p>11 had to be significant cuts in accrued vested pension</p> <p>12 amounts?</p> <p>13 A. I don't recall the state ever, as you say, asserting</p> <p>14 that there had to be.</p> <p>15 Q. At the time you filed for bankruptcy or when the City</p> <p>16 filed for bankruptcy, was it your intent absent a</p> <p>17 consensual deal with the relevant stakeholders that</p> <p>18 accrued vested pension amounts for both active and</p> <p>19 currently retired persons would be cut?</p> <p>20 A. Well, first it was our intent that we reach some sort</p> <p>21 of understanding with stakeholders, that's why we</p> <p>22 asked for the formation of a retiree committee,</p> <p>23 because we recognize we needed to have representation</p> <p>24 on those issues. Secondly, what we're asking for and</p> <p>25 what we proposed in this proposal was the size of the</p>



<p style="text-align: right;">Page 249</p> <p>1 unfunded pension obligation and to have discussions 2 about that amount. We did not want to imposes it, 3 we've said that many times, so in direct response to 4 your question, I don't know what we will do absent 5 consent. 6 Q. Okay, I'm not sure you answered my question so let me 7 ask you again. 8 A. Uh-huh. 9 Q. Putting aside -- or assuming that there is no 10 consensual deal that would occur -- 11 A. Right. 12 Q. -- was it your intent at the time the City filed for 13 bankruptcy that there would be a -- nonconsensual 14 significant cuts in accrued vested pension amounts? 15 A. No. 16 Q. That was not your intent? 17 A. No. 18 Q. Did you have -- at the time of the bankruptcy filing, 19 did you have an intention as to what you wanted to 20 happen vis-a-vis the Detroit's pension liabilities 21 were you enable to achieve a consensual deal? 22 A. Did we have an intent as to what was going to happen? 23 Q. Yeah, what did you hope would happen or what did you 24 intend to happen to the pension liabilities in 25 bankruptcy if you were unable to get a deal?</p>	<p style="text-align: right;">Page 251</p> <p>1 deal? 2 MR. SHUMAKER: Object to the form. It was 3 at the governor's request but -- 4 MR. DeCHIARA: Okay, I accept that 5 modification. 6 Q. But can you answer the question? 7 A. Yes. No, because we've never made a -- well, we've 8 never made a threat that what will happen if we don't 9 reach a consensual deal. We will address that issue 10 if and when it arises. 11 Q. Yeah, just to be clear, I'm not asking you about 12 threats, I'm not suggesting there were any threats. 13 I'm just asking what was your intent, what was going 14 on in your head? 15 A. We don't have an intent in that respect. 16 Q. Mr. Orr, I would like to show you a document I'll have 17 marked as Orr Exhibit 17. I apologize, I only have 18 one copy so let me show it to your counsel first. 19 MR. DeCHIARA: Let me read what it is. 20 It's a document that's on the docket, it's a document 21 849, it's the City of Detroit, Michigan's Objections 22 and Responses to Detroit Retirement Systems' First 23 Request For Admission Directed to the City of Detroit, 24 Michigan. 25 (Marked Exhibit No. 17.)</p>
<p style="text-align: right;">Page 250</p> <p>1 A. Yeah, I think you're -- 2 MR. SHUMAKER: I'll object, it calls for 3 speculation, but you can -- 4 A. Yeah. 5 Q. Let me -- I'm not asking you to speculate, I'm asking 6 you what your actual intent was at the time you filed 7 for bankruptcy. 8 A. Our intent was to seek a consensual deal. 9 Q. Did you have -- did you think about the possibility 10 that you might not be able to achieve a consensual 11 deal? Did that cross your mind? 12 A. Yes. 13 Q. Okay. And when that thought crossed your mind that 14 you might not be able to have a consensual deal, did 15 you then have an intent as to what you wanted to have 16 happen with the pension liabilities in bankruptcy? 17 A. No. We were going to cross that bridge when we got to 18 it. 19 Q. Okay, just so I understand your testimony, you filed 20 for bankruptcy -- the City filed for bankruptcy at 21 your request, you contemplated the possibility that 22 there would be no consensual deal -- 23 A. Right. 24 Q. -- but you had no plan or intention as to what would 25 happen to the pension liabilities if there were no</p>	<p style="text-align: right;">Page 252</p> <p>1 MR. SHUMAKER: Thanks. 2 Okay. 3 THE WITNESS: Okay. 4 Q. First of all, are you familiar with that document, 5 Mr. Orr? 6 MR. SHUMAKER: Take a look at the first 7 page. 8 THE WITNESS: Okay. 9 Q. And I will represent that there's a box that's circled 10 and that's my handwriting from this morning. 11 A. Okay. Okay. Yes. 12 Q. Are you familiar with this document? 13 A. Yes. 14 Q. Did you review it before it was filed by the City? 15 A. Yes, I did. 16 Q. Let me refer you to -- let me just read. I'll read it 17 over your shoulder so we can all read it together. 18 And request for admission 12 says, admit, the City 19 intends to seek or diminish -- seek to diminish or 20 impair the accrued financial benefits of the 21 participants in the retirement system through this 22 Chapter 9 case. The response is admitted. Were you 23 aware of that admission made by the City? 24 A. Yes, I reviewed these before they were filed. 25 Q. Okay. And am I reading this correctly that the City</p>

<p style="text-align: right;">Page 253</p> <p>1 does -- or at least as of the date of this document, 2 which looks like it was entered on the docket on 3 September 13th, that the City intends to seek or 4 diminish to impair accrued pension benefits of Detroit 5 pensioners? 6 A. Yes, that's admitted. 7 Q. Okay. And so when did -- when did the City first -- 8 when did that intent by the City first come into 9 existence? Was it in existence at the time of the 10 bankruptcy filing? 11 A. Well, I think we said in June 14th that we need to 12 adjust pensions, I think we said it in several 13 meetings after that so when you say intent as in the 14 legal conclusion of that document, I think we've said 15 that. I think what we've consistently said, though, 16 we want to do that consensually by a consensual plan. 17 Q. I understand that you've said that, but I'm just 18 trying to nail down, if you will, this intent that's 19 expressed, that's admitted in response to request for 20 admission 12 in Exhibit 17. I'm just trying to nail 21 down when that intent first came into existence. Did 22 it come into existence at the time of the bankruptcy, 23 sometime before the bankruptcy was filed? If you can 24 shed whatever light you can on the timing of when that 25 intent came into existence.</p>	<p style="text-align: right;">Page 255</p> <p>1 asked do you intend to benefit (sic) and we admitted 2 it, and I guess in response to your question as to 3 when that intent arose, I guess it's at the point of 4 admission. 5 Q. Okay. And so you're saying prior to the City 6 preparing this document, the intent that's referred to 7 in the document did not exist? 8 A. I'm not sure we prepared that document. 9 Q. Well, it's a filing in this case -- 10 A. It's a response. 11 Q. -- by the City of Detroit? 12 A. Right, but it's a response to a request for admission. 13 Q. Right. 14 A. Okay. 15 Q. But the relevant part where it says admitted. 16 A. Since you're using intent it sounds like you're using 17 as a legal conclusion. I'm saying that the -- using 18 your words, the formal intent occurred at the point of 19 admission. That's what an admission is. 20 Q. Okay. So -- let me describe my understanding, you 21 tell me if you agree with my understanding. 22 A. Uh-huh. 23 Q. So this is a request for admission that asks whether 24 -- that asks the City whether it admits that the City 25 has a certain intent and the City admitted that;</p>
<p style="text-align: right;">Page 254</p> <p>1 A. Other than what I've said, we said at June 14th we 2 have to adjust the pensions, we asked for a consensual 3 plan, so I suppose you can say -- without getting 4 caught in the legal conclusion of the intent, I 5 suppose you could say that from our proposal to the 6 time of that admissions the intent as you say without 7 drawing a legal conclusion occurred. 8 Q. Okay, so that intent existed at least -- at least at 9 the time of the June 14th proposal; is that a fair 10 characterization of your testimony? 11 A. No, I said sometime between the June 14th testimony 12 till the entry of those admissions. The intent as you 13 say could have occurred upon the execution of that 14 admission. 15 Q. Okay. And is it -- and you don't know when that 16 intent came into existence? 17 A. No, I think it came -- frankly, if you're using the 18 word intent, I think it came when that admission was 19 supplied. 20 Q. So your testimony -- so your testimony is this intent 21 arose at the time that this answer was drafted or 22 submitted by the City onto the docket? That's when 23 the City developed the intent? 24 A. I don't know if it was on the docket. What I know is 25 the question says, a legal conclusion, the question</p>	<p style="text-align: right;">Page 256</p> <p>1 correct? 2 A. Yes, yes, that's correct. 3 Q. Okay -- so okay. So as of the moment that the City 4 made that admission in this document, the City had 5 that intent? 6 A. I think -- I think that's an admission, yes. 7 Q. Right. So we're in agreement. 8 A. Okay. 9 Q. My question is the intent that's referred to, did it 10 exist at any moment before the City made the 11 admission? 12 A. In my mind, no. I mean, the time of admission is when 13 it admits to the intent. 14 Q. And so in the June 14th proposal when it says there 15 must be significant cuts in accrued vested pension 16 amounts, it was not your intent that there be such 17 cuts absent a consensual deal? 18 A. What I'm saying is your letter -- your request for 19 admissions asks when does the City intend to diminish. 20 The proposal said there must be cuts, but throughout 21 that time we said we wanted a consensual resolution. 22 By using the word intent I'm saying it just as a 23 matter of practicality the expressed intent is upon 24 that admission. 25 Q. Let me ask you about Article 9, Section 25 (sic) of</p>

<p style="text-align: right;">Page 257</p> <p>1 the Michigan Constitution. There was a great deal of</p> <p>2 colloquy earlier today about that topic. Do you</p> <p>3 recall that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Okay. Did you have any discussions with the governor</p> <p>6 or the governor's staff or Mr. Dillon or Mr. Baird at</p> <p>7 any time about the meaning or import of Article 9,</p> <p>8 Section 25 of the Michigan Constitution?</p> <p>9 MR. SHUMAKER: Without counsel present?</p> <p>10 MR. DeCHIARA: Yeah, without invading</p> <p>11 attorney-client privilege.</p> <p>12 Q. Oh, I'm sorry, I'm misspeaking. Section 24.</p> <p>13 A. I understood, yes, okay.</p> <p>14 Q. Yes.</p> <p>15 A. I don't recall any of those discussions without</p> <p>16 counsel present.</p> <p>17 Q. Prior to your being appointed as Emergency Manager did</p> <p>18 you speak to any of your colleagues at Jones Day about</p> <p>19 Article 9, Section 24 of the Michigan Constitution?</p> <p>20 A. Yes, I believe I did.</p> <p>21 Q. And with whom did you speak --</p> <p>22 A. With whom did I speak --</p> <p>23 Q. -- about it?</p> <p>24 A. Let me clarify. I don't know if I spoke, I think I</p> <p>25 saw some research on that article.</p>	<p style="text-align: right;">Page 259</p> <p>1 A. No, I think it came in hard copy.</p> <p>2 Q. And do you recall what it said?</p> <p>3 MR. SHUMAKER: To the extent that it's not</p> <p>4 a privileged memo.</p> <p>5 THE WITNESS: No, it was marked</p> <p>6 attorney-client privilege, attorney work product so I</p> <p>7 don't think I can speak to it. That's what I recall</p> <p>8 about it.</p> <p>9 MR. SHUMAKER: Certainly if it was a memo</p> <p>10 involving attorney-client advice, you're not going to</p> <p>11 -- you're not going to testify about it. I'm going to</p> <p>12 instruct you not to --</p> <p>13 THE WITNESS: Right, I think it can be</p> <p>14 characterized as that, yes.</p> <p>15 Q. Without going into the substance of the document, was</p> <p>16 it a document that was prepared for a client of</p> <p>17 Jones Day? Do you know?</p> <p>18 A. It may have been prepared in contemplation for a</p> <p>19 client. I'm being careful because the attorney-client</p> <p>20 privilege can attach prior to a formal relationship so</p> <p>21 I'm just being very careful, but I think it -- I think</p> <p>22 it implicates attorney-client privilege. I recall</p> <p>23 seeing a memo, but I also recall up in the right-hand</p> <p>24 corner that it had all of the instructions about</p> <p>25 privilege and work product.</p>
<p style="text-align: right;">Page 258</p> <p>1 Q. Okay, and this was research that you saw while you</p> <p>2 were a partner at Jones Day?</p> <p>3 A. Yes.</p> <p>4 Q. And it was research shown to you by your colleagues at</p> <p>5 Jones -- one or more of your colleagues at Jones Day?</p> <p>6 A. Yeah, I'm -- I'm not a Michigan law constitutional</p> <p>7 scholar, but I think there are various research papers</p> <p>8 that were circulated. I don't think anybody came in</p> <p>9 and said, here, read this. I think I just saw a paper</p> <p>10 that discussed it.</p> <p>11 Q. Where did -- did you see it as a result of your own</p> <p>12 research --</p> <p>13 A. No.</p> <p>14 Q. -- or did someone show it to you?</p> <p>15 A. I think somebody else was doing research on it and I</p> <p>16 think it was either through a distribution or --</p> <p>17 sometimes distributions come through the office, you</p> <p>18 don't know who, you know, they just come through</p> <p>19 interoffice mail and you read the distribution and it</p> <p>20 may have been a research memo that came through my</p> <p>21 office, came to my office.</p> <p>22 Q. Do you have in your mind a particular document?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And was it a hard -- did it land on your desk in hard</p> <p>25 copy or did it come through your email?</p>	<p style="text-align: right;">Page 260</p> <p>1 Q. Apart from that document did you see any other</p> <p>2 documents --</p> <p>3 A. No, no.</p> <p>4 Q. Okay. Do you recall any conversations you had with</p> <p>5 any of your colleagues at Jones Day while you were</p> <p>6 still at Jones Day about the Michigan Constitution?</p> <p>7 A. No.</p> <p>8 Q. Did you attend the June 14, 2013 meeting that's</p> <p>9 referenced in paragraph 80 of your declaration?</p> <p>10 A. Yes.</p> <p>11 Q. And did you speak at that meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Did you say anything to the effect that -- did you say</p> <p>14 anything at the meeting to the effect that this</p> <p>15 meeting was not a negotiation?</p> <p>16 A. I don't recall if I said that. I may have, but I</p> <p>17 don't recall.</p> <p>18 Q. If there was testimony by others that you did say</p> <p>19 that, would you be in a position to deny that you said</p> <p>20 it?</p> <p>21 A. No, I don't recall that I said it or not.</p> <p>22 Q. What about the June 20th meeting? Did you attend</p> <p>23 that?</p> <p>24 A. I attended one of those meetings. It may have been</p> <p>25 the June 20th.</p>



<p>Page 261</p> <p>1 Q. Are you saying --</p> <p>2 A. The following week, yes.</p> <p>3 Q. When you say one of those meetings, are you sure you</p> <p>4 attended June 14th?</p> <p>5 A. No, no, no, when I say one, I mean one of the</p> <p>6 subsequent. I'm sure I attended June 14th. June 10th</p> <p>7 was Monday, June 14th was Friday, my public meeting</p> <p>8 was Monday, June 14th was the all creditors meeting.</p> <p>9 There was subsequent due diligence meetings the</p> <p>10 following week and I recall attending at least one of</p> <p>11 those that week. That was the those I was referring</p> <p>12 to.</p> <p>13 Q. I'm a little confused. Are you sure you attended June</p> <p>14 14th?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So do you recall whether you attended June</p> <p>17 20th?</p> <p>18 A. I think I did, but I don't recall.</p> <p>19 Q. Okay. What about July 11th?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. So I already asked you about whether at the</p> <p>22 June 14th meeting you said anything to the effect of</p> <p>23 that this was not a negotiation. Let me ask you the</p> <p>24 same question for the June 20th and July 11th. Do you</p> <p>25 recall at that -- at those meetings saying anything to</p>	<p>Page 263</p> <p>1 A. Yes, I believe so.</p> <p>2 Q. Okay. And some of those individuals spoke?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you recall whether at any of those meetings</p> <p>5 that you attended whether any of the other individuals</p> <p>6 who were there on behalf of the City said words to the</p> <p>7 effect of this is not a negotiation?</p> <p>8 A. Do I recall? No.</p> <p>9 Q. At the June 20th meeting, is it true that the</p> <p>10 attendees, and by the attendees I mean the people who</p> <p>11 were not there on behalf of the City but the other</p> <p>12 people, that in order to be heard they needed to fill</p> <p>13 out a card and submit the card to someone who was</p> <p>14 running the meeting? Is that how things worked?</p> <p>15 A. Where was the June 20th meeting?</p> <p>16 Q. I don't know.</p> <p>17 A. I -- I know at my June 10th meeting that we had</p> <p>18 speakers. I don't recall. I don't recall June 20.</p> <p>19 Q. Let me clarify. Let's talk about the June 14th</p> <p>20 meeting, the one you're sure you attended.</p> <p>21 A. Right.</p> <p>22 Q. Was there a system in place at that meeting where for</p> <p>23 an attendee to be heard he or she had to write -- fill</p> <p>24 out a card and submit it?</p> <p>25 A. Yes, I believe so.</p>
<p>Page 262</p> <p>1 the effect of this is not a negotiation?</p> <p>2 A. I may have. As I've said several times today, you</p> <p>3 know, bargaining negotiations is suspended for five</p> <p>4 years so I may have said that, but I don't recall.</p> <p>5 Q. And again, if there were witnesses who testified they</p> <p>6 heard you say that at one or more of these meetings,</p> <p>7 would you be in a position to deny that?</p> <p>8 A. I don't know if I would deny it or if I would confirm</p> <p>9 it. I mean, their recollection of what was said could</p> <p>10 be different than mine or what they heard.</p> <p>11 Q. Did you attend a meeting on July 10th with creditors?</p> <p>12 A. I may have.</p> <p>13 Q. Same question for July 10th. Do you recall saying</p> <p>14 anything to the effect that that meeting was not a</p> <p>15 negotiation?</p> <p>16 A. I think I generally, when I would go to these</p> <p>17 meetings, say we're having discussions and exchange,</p> <p>18 but I would try -- if I said this is not a</p> <p>19 negotiation, I would try to make sure that I did not</p> <p>20 waive the suspension of bargaining under 436, so I may</p> <p>21 have said that, yes.</p> <p>22 Q. You may have said what?</p> <p>23 A. This is not a negotiation, yeah, I may have said that.</p> <p>24 Q. Okay. Apart from you there were others who attended</p> <p>25 those meetings on behalf of the City; correct?</p>	<p>Page 264</p> <p>1 Q. Okay, and describe how -- how did that -- what was</p> <p>2 that process, how did that work?</p> <p>3 A. That process was arranged by my staff. My</p> <p>4 understanding is that if people wanted to speak, they</p> <p>5 could fill out a card and a question would be asked</p> <p>6 and members who were on the DS on the panel would</p> <p>7 answer the question.</p> <p>8 Q. Who would read out the card?</p> <p>9 A. Initially it was the -- someone I believe on my staff</p> <p>10 or some of my consultant's staff, but toward the end</p> <p>11 of the meeting people just started asking questions</p> <p>12 outright.</p> <p>13 Q. Did -- that same process of attendees having to fill</p> <p>14 out a card, did that occur at any of the other</p> <p>15 meetings? And by the other meetings I mean either</p> <p>16 June 20th, July 10th or July 11th?</p> <p>17 A. I don't recall.</p> <p>18 Q. It may have?</p> <p>19 A. It may have, but I don't recall.</p> <p>20 Q. Okay. Have you ever in your career as an attorney</p> <p>21 attended a negotiation session of any kind?</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever been at a negotiation session where one</p> <p>24 side or the other has to fill out a card and have it</p> <p>25 read by someone else to be heard?</p>



<p style="text-align: right;">Page 265</p> <p>1 A. You're using the phrase negotiation session, and I 2 want to be clear that what we were saying is make sure 3 that we did not waive any rights under 436. I have 4 been at meetings where for purposes of to engage in 5 oral discussion, yes, you've had to fill out cards to 6 be heard, yes. I have been at auctions. Yes, I have 7 been at meetings like that. 8 Q. At auctions? 9 A. Yeah, I've been at auctions, been at meetings, been at 10 negotiations, yes, many different types of meetings. 11 Q. What kind of negotiations where those where 12 participants had to fill out a card to be heard? 13 A. They could have been negotiations for finance, they 14 could have been negotiations for procedures, they 15 could have been negotiations for a number of different 16 subjects, but it's happened on more than one occasion. 17 Q. Have you ever attended a collective bargaining 18 negotiation? 19 A. Yeah, I think I have. 20 Q. Okay. Did you ever see that type of system used in a 21 collective bargaining negotiation? 22 A. I don't think I saw it at the one I attended, but 23 collective bargaining is suspended. 24 Q. Did you -- before any of these meetings -- and by 25 these meetings, I mean the June 14th, June 20th, July</p>	<p style="text-align: right;">Page 267</p> <p>1 2013. 2 A. I'm -- 3 MR. SHUMAKER: We have a different letter I 4 think. 5 A. I have John Cunningham. 6 MR. SHUMAKER: We have John Cunningham. 7 MR. DeCHIARA: I'm sorry, let's use that 8 one. 9 THE WITNESS: Okay. 10 MR. DeCHIARA: Thank you. 11 Q. Orr Exhibit 18 will be a Jones Day letter to John 12 Cunningham dated June 27, 2013. Let me ask you, have 13 you seen this Orr Exhibit 18 before? 14 A. Yes. 15 Q. And the first sentence of the letter says, thank you 16 for participating in the June 20th, 2013 informational 17 meetings pertaining to the City of Detroit's, and then 18 it continues -- 19 A. Uh-huh. 20 Q. -- and you can read the rest -- 21 A. Yes. 22 Q. -- but I won't read it aloud. 23 Do you concur with the description in the 24 sentence that I read of the June 20th meeting as an 25 informational meeting?</p>
<p style="text-align: right;">Page 266</p> <p>1 10th or July 11th meetings -- did you consult with the 2 governor or any other state official about how the 3 meetings would be conducted? 4 A. No, not to the best of my knowledge. 5 Q. Did you consult with anyone, the governor or anyone, 6 any state official, regarding what the purpose or 7 nature of the meetings would be? 8 A. When you say consult, you know, I've testified earlier 9 today that we had regular communications with the 10 governor's office, but my understanding was that how 11 we ran meetings was substantially left up to me and my 12 team. So no, we didn't consult in that regard on how 13 the meetings were run. 14 Q. Okay, just to clarify what I mean by consult. I mean 15 did you talk? 16 A. Not at that level of detail how we're going to run, no 17 we didn't talk, no. 18 MR. DeCHIARA: Let me mark a document, 19 which I'll mark as -- ask the court reporter to mark 20 as Exhibit 18. 21 (Marked Exhibit No. 18.) 22 Q. Have you -- have you ever seen this document before? 23 A. Yes. 24 Q. And let me just identify it for the record. It's a 25 letter from Jones Day to Larry Stewart dated June 27,</p>	<p style="text-align: right;">Page 268</p> <p>1 A. Yes. 2 Q. Let me refer you back to your June 14th, 2013 3 proposal. 4 A. Yes. 5 Q. And to page -- the original page 109. And the third 6 to the last bullet point which we read earlier and 7 again I'm going to focus on the bottom line of that 8 bullet point that says, "There must be significant 9 cuts in accrued vested pension amounts for both active 10 and currently retired persons." 11 At the time of the meetings that I've been 12 referring to, the June 14th, June 20th, July 10th and 13 July 11th meetings, were -- would you have been 14 willing had there been negotiations that took place to 15 compromise and accept -- accept an outcome of the 16 restructuring effort that resulted in there not being 17 cuts in accrued vested pension amounts for both active 18 and currently retired persons? 19 A. Well, that's a hypothetical question that could depend 20 upon a number of things. I don't know. I would have 21 to see the proposal. We were willing to listen to any 22 proposal or counter that came in. 23 Q. Okay, and I'm not trying to phrase it as a 24 hypothetical, I want to focus on what was in your mind 25 at the time of these meetings. So let me ask you.</p>



<p style="text-align: right;">Page 269</p> <p>1 Did you ever consider at the time of these meetings 2 whether you would accept in some scenario that 3 resulted from negotiations that there would be an 4 outcome to the restructuring where there would not be 5 cuts to accrued vested pension amounts? 6 A. That depends upon the proposal and the circumstances 7 of that proposed outcome. 8 Q. I think we're maybe misunderstanding each other. I'm 9 not asking you what you would have done -- 10 A. Uh-huh. 11 Q. -- had you gotten a certain proposal or what you would 12 have done under some circumstances that did not occur. 13 What I'm asking you is as to what your actual state of 14 mind was at the time of these meetings. In your 15 actual state of mind -- 16 A. Uh-huh. 17 Q. -- did you have -- did you consider and did you think 18 about that had there been certain negotiations that 19 led down a certain path, did you in your mind consider 20 that you might accept an outcome of the restructuring 21 where there would not be cuts to accrued vested 22 pension amounts? 23 A. I was receptive as we said to anything, but that would 24 depend upon the proposal. 25 Q. Did you say at any of these meetings that you would be</p>	<p style="text-align: right;">Page 271</p> <p>1 June 14th meeting. 2 A. Okay. 3 Q. Do you have a recollection of any words you used to 4 communicate to those in attendance that you were open 5 to consider anything, if that's a fair 6 characterization of your prior testimony? Did you use 7 words to that effect and if so what were those words? 8 A. I don't remember the exact words, but I think we 9 expressed the sentiment that this is a proposal and 10 we're open to discussions. 11 Q. Well, that's a little different. I mean, to be open 12 to discussion. I'm not asking you -- I think you 13 testified a few minutes ago that you were open to 14 anything and if I'm mischaracterizing that, correct 15 me. 16 A. Well, no, anything -- and I meant anything meaning 17 anything in terms of discussions, that's why we styled 18 this, we never called this a plan, we never called 19 this a deal, we always called it a proposal because we 20 were open for discussions, any response, meaning 21 anything, so I think they're the same thing. I'm not 22 trying to be cute in any fashion, I'm just saying we 23 were open to responses, yes. 24 Q. Did you ever say to the attendees at the meetings or 25 communicate to the attendees in writing that the City</p>
<p style="text-align: right;">Page 270</p> <p>1 receptive to anything? 2 A. No, I think we did say that, yes. 3 Q. So you would have been receptive to an outcome where 4 there would be no cuts in accrued vested pension 5 amounts? 6 A. That depends upon what the proposal was. We were 7 receptive to hearing anything which we haven't heard, 8 so yes. 9 Q. And is that true today? Are you willing to consider 10 an outcome to this restructuring effort where there 11 would be no cuts to accrued vested pension amounts? 12 A. That depends upon the terms of the proposal. That's 13 -- that's -- we'll listen to -- we have said before 14 and we'll say again, we'll listen to anything, but it 15 depends upon the terms. 16 Q. Okay. 17 A. Your question's a hypothetical so I -- I don't -- it 18 depends upon what the terms are. 19 Q. Okay, well, we have a disagreement with whether my 20 question is a hypothetical, but it is what it is. 21 A. Okay. 22 Q. I can only ask you to answer it to the best of your 23 ability. 24 A. That's the best of my ability. 25 Q. Let me now ask you about what you actually said at the</p>	<p style="text-align: right;">Page 272</p> <p>1 would consider an outcome to the restructuring effort 2 whereby there would be no cuts to accrued vested 3 pension amounts? 4 A. Did we ever communicate? I'm not sure that anyone on 5 my team did. To the best of my knowledge, I don't 6 recall doing that. 7 Q. Okay. Did you ever -- you or your team ever 8 communicate at the meetings or in writing to the 9 creditors that you would be open to a result of the 10 restructuring effort that would result in something 11 less than significant cuts in accrued vested pension 12 amounts? 13 A. Let me -- this line of questioning, let me respond 14 this way. I think it's fair to say that we 15 communicated that we were open to discussions and 16 suggestions and counterproposals. Depending upon what 17 the term of those discussions, suggestions and 18 counterproposals or anything were, we were willing to 19 discuss them. 20 Q. Let me turn your attention back to page 109 of the -- 21 of Exhibit 9, which is the June 14th proposal for 22 creditors. 23 A. Yes. 24 Q. And I believe you were questioned about this earlier 25 so I'll keep this short, but the fifth bullet point</p>



<p style="text-align: right;">Page 273</p> <p>1 from the bottom of the page makes reference to an</p> <p>2 underfunding of \$3.5 billion.</p> <p>3 A. Yes.</p> <p>4 Q. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And is it that assessment of -- is it that assessment</p> <p>7 that that's the level of underfunding that caused you</p> <p>8 to conclude two bullet points down that there had to</p> <p>9 be significant cuts in accrued pension benefits?</p> <p>10 MR. SHUMAKER: Object to form.</p> <p>11 Q. I mean accrued pension liability.</p> <p>12 MR. SHUMAKER: Object to the form.</p> <p>13 A. Yes, we believe there are insufficient funds, yes.</p> <p>14 Q. Okay. And the pension systems themselves believed,</p> <p>15 and continue to believe, that the amount of</p> <p>16 underfunding is less than 3.5 billion; correct?</p> <p>17 A. Yes.</p> <p>18 MR. SHUMAKER: Objection, foundation.</p> <p>19 A. I believe they recognize they're underfunding but</p> <p>20 there have been statements that it's less than</p> <p>21 3.5 billion.</p> <p>22 Q. Statements by them?</p> <p>23 A. By them.</p> <p>24 Q. Okay. Did you ever speak to the governor or his staff</p> <p>25 or any state officials about what was the -- or what</p>	<p style="text-align: right;">Page 275</p> <p>1 A. No, not that I recall. I think -- no.</p> <p>2 Q. Did you say that to him?</p> <p>3 A. I think I said something along the lines we believe</p> <p>4 it's 3.5, some of the pension funds have asserted it's</p> <p>5 different, we need to have a dialogue to derive a</p> <p>6 number.</p> <p>7 Q. So you were the one who brought up the --</p> <p>8 A. Yes.</p> <p>9 Q. -- topic?</p> <p>10 A. Yes.</p> <p>11 Q. And what caused you to believe that the pension funds</p> <p>12 were underestimating the amount of liability?</p> <p>13 A. As has been discussed both in the presentation and</p> <p>14 many other times, we looked at a number of factors.</p> <p>15 First from Gabriel Rotor, then from Milliman's initial</p> <p>16 analysis of the Gabriel Rotor report, then from</p> <p>17 Milliman's independent report and the unfunded actual</p> <p>18 liability, the expected rate of return on assets, the</p> <p>19 proposed amortization rate, how much we have to pay</p> <p>20 out over time --</p> <p>21 THE COURT REPORTER: I'm sorry. Start</p> <p>22 again. The expected rate of assets.</p> <p>23 A. The expected rate of return, the market value of</p> <p>24 assets, the proposed amortization rate and other</p> <p>25 factors, which led us to conclude that they were</p>
<p style="text-align: right;">Page 274</p> <p>1 is the correct amount of underfunding?</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. Who did you speak to about that?</p> <p>4 A. Putting aside any discussions with attorneys, as we've</p> <p>5 done --</p> <p>6 MR. SHUMAKER: Same admonition as before.</p> <p>7 THE WITNESS: Same admonition.</p> <p>8 A. -- I believe I may have spoke with -- me personally</p> <p>9 may have spoken with the treasurer.</p> <p>10 Q. When was that?</p> <p>11 A. I don't recall.</p> <p>12 Q. Was it before or after June 14th?</p> <p>13 A. Probably before.</p> <p>14 Q. And was it a face-to-face meeting?</p> <p>15 A. It may have been. It may have been.</p> <p>16 Q. Where was the meeting?</p> <p>17 A. I -- I -- there were so many meetings with so many</p> <p>18 different parties, not just with the treasurer, but it</p> <p>19 may have been here in Detroit. We sometimes meet in</p> <p>20 Detroit.</p> <p>21 Q. Do you recall the substance of your conversation?</p> <p>22 A. I do not.</p> <p>23 Q. Did he say to you that he believed the pension funds'</p> <p>24 assessment of the amount of underfunding was</p> <p>25 unrealistic or words to that effect?</p>	<p style="text-align: right;">Page 276</p> <p>1 underfunded at this level to meet the anticipated</p> <p>2 actuarial liabilities in out years.</p> <p>3 Q. So you were advised by certain experts who were</p> <p>4 consulting you --</p> <p>5 A. Yes.</p> <p>6 Q. -- about this matter?</p> <p>7 A. Yes. As was testified to this morning, I'm not an</p> <p>8 actuary. I relied on my team, yes.</p> <p>9 Q. But what initially caused you to look into this issue?</p> <p>10 Did someone come to you and say -- suggest that the</p> <p>11 pension liability's underfunded or is this something</p> <p>12 that you yourself decided to seek out an opinion from</p> <p>13 experts on?</p> <p>14 A. I -- I think that this issue had been discussed prior</p> <p>15 to my becoming Emergency Manager in various forms with</p> <p>16 financial stability agreement, perhaps even in a</p> <p>17 consent agreement. When we're looking at all</p> <p>18 obligations of the City, I seem to recall those</p> <p>19 documents started out at \$12 billion of total debt,</p> <p>20 then a subsequent one having to do before I got here</p> <p>21 in 2012 came up with \$14 billion of debt, and then the</p> <p>22 first 30 days that I was appointed one of the</p> <p>23 obligations under 436 is get a true assessment of the</p> <p>24 City's financial condition, we did a deeper dive and</p> <p>25 that's when we derived these numbers. So that was</p>

<p style="text-align: right;">Page 277</p> <p>1 based upon historical calculations and my obligations</p> <p>2 under the statute.</p> <p>3 MR. DeCHIARA: I would like to go off the</p> <p>4 record just for a minute. I may be done, I just want</p> <p>5 to consult with co-counsel.</p> <p>6 MR. SHUMAKER: Sure.</p> <p>7 THE VIDEOGRAPHER: Going off the record at</p> <p>8 5:26 p.m.</p> <p>9 (A brief recess was taken.)</p> <p>10 THE VIDEOGRAPHER: We're back on the record</p> <p>11 at 5:39 p.m.</p> <p>12 REEXAMINATION</p> <p>13 BY MR. ULLMAN:</p> <p>14 Q. Mr. Orr?</p> <p>15 A. Yes.</p> <p>16 Q. Just a few more questions for you.</p> <p>17 A. Sure, Mr. Ullman.</p> <p>18 Q. You are the -- let me withdraw that.</p> <p>19 The June 14th proposal that we've looked at</p> <p>20 was put forward by you in your capacity as Emergency</p> <p>21 Manager?</p> <p>22 A. Yes.</p> <p>23 Q. Does anyone besides you have authority to change or</p> <p>24 modify the terms of the proposal?</p> <p>25 A. Well, it's my proposal and under statute I have</p>	<p style="text-align: right;">Page 279</p> <p>1 movement on it.</p> <p>2 Q. So as things now stand, there's no plan to put forward</p> <p>3 anything else if the creditors and in particular the</p> <p>4 retirees do not agree to what's set out in the June</p> <p>5 14th proposal?</p> <p>6 A. As it stands right now, we don't have a plan.</p> <p>7 MR. ULLMAN: I have nothing further. Thank</p> <p>8 you, Mr. Orr.</p> <p>9 MR. SHUMAKER: Thank you, counsel.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 THE VIDEOGRAPHER: Going off the record at</p> <p>12 5:41 p.m.</p> <p>13 (Discussion held off the record.)</p> <p>14 THE VIDEOGRAPHER: We're back on the record</p> <p>15 at 5:43 p.m.</p> <p>16 EXAMINATION</p> <p>17 BY MS. GREEN:</p> <p>18 Q. Hi, Mr. Orr. We've met before.</p> <p>19 A. Yes.</p> <p>20 Q. My name is Jennifer Green, I represent the two</p> <p>21 Retirement Systems for the City of Detroit.</p> <p>22 A. Yes, Jennifer -- Ms. Green. Good to see you again.</p> <p>23 Q. Thank you. Nice to you see you again too.</p> <p>24 I have a question about Exhibit 11. I</p> <p>25 don't know if you have it in front of you or not.</p>
<p style="text-align: right;">Page 278</p> <p>1 substantial discretion, but ultimately I report to the</p> <p>2 governor, but as far as this, no one else in the City</p> <p>3 does, no.</p> <p>4 Q. No one other than you?</p> <p>5 A. No one other than me.</p> <p>6 Q. Now, in connection with a Chapter 9 proceeding that's</p> <p>7 ongoing, in the event that you are unable to reach a</p> <p>8 consensual resolution, do you intend to withdraw the</p> <p>9 bankruptcy filing?</p> <p>10 MR. SHUMAKER: Objection, calls for</p> <p>11 speculation.</p> <p>12 A. Yeah, I don't know what we'll do at that point.</p> <p>13 Suffice it to say, if we can't reach a consensual</p> <p>14 resolution, there are serious questions about the City</p> <p>15 for a number of reasons.</p> <p>16 Q. And if the creditors and objectors do not agree to the</p> <p>17 terms that are set out in the June 14th proposal, do</p> <p>18 you intend to put forward a plan in the Chapter 9</p> <p>19 proceeding that treats pension contributions for</p> <p>20 retirees differently than the way those contributions</p> <p>21 are treated in the June 14th proposal?</p> <p>22 MR. SHUMAKER: Same objection.</p> <p>23 A. Yeah, I don't know what we intend to do. Suffice it</p> <p>24 to say, I think the proposal speaks for itself and</p> <p>25 we'll stand by that. We're hoping to get some</p>	<p style="text-align: right;">Page 280</p> <p>1 A. Okay.</p> <p>2 MR. SHUMAKER: Which one is that?</p> <p>3 MS. GREEN: It's the July 18th letter from</p> <p>4 the governor.</p> <p>5 MR. SHUMAKER: Thank you.</p> <p>6 A. Okay. It's in here. Here it is, got it. Okay.</p> <p>7 Q. Do you happen to know who within the governor's office</p> <p>8 drafted this letter?</p> <p>9 A. No, I do not.</p> <p>10 Q. Do you know if Jones Day had any input in drafting the</p> <p>11 July 18th letter?</p> <p>12 A. To the best of my knowledge I don't think they did.</p> <p>13 Q. Do you know if they had any input or saw a preview of</p> <p>14 the letter before it was delivered on the 18th?</p> <p>15 A. To the best of my knowledge they did not. I know I</p> <p>16 did not.</p> <p>17 Q. Did you have any specific conversations with the</p> <p>18 governor about this letter between July 16th and July</p> <p>19 18th?</p> <p>20 MR. SHUMAKER: Without counsel present?</p> <p>21 MS. GREEN: With the caveat without counsel</p> <p>22 present.</p> <p>23 A. Without counsel present? No.</p> <p>24 Q. Did you have any with counsel present?</p> <p>25 A. Yes, I believe on the morning of the 18th.</p>



<p style="text-align: right;">Page 281</p> <p>1 Q. Okay. You testified earlier that you were expecting 2 the letter on the 18th and you really didn't know what 3 to expect until you actually received the letter? 4 A. I was expecting a letter at any time. After I 5 received it, I and my staff, Mr. Nowling, Ms. Penn, 6 would spend the 17th and the morning of the 18th for 7 that matter wondering if the letter was going to be 8 forthcoming. I didn't know when I was going to 9 receive the letter. 10 Q. And did you know what the contents of the letter would 11 be with respect to any contingencies? 12 A. No. 13 Q. Were contingencies anything that were discussed during 14 the meeting with the governor between the 16th and the 15 18th? 16 MR. SHUMAKER: Again, only without counsel 17 present. If there were any such discussions. 18 A. No, there were none, not without counsel. 19 Q. Without disclosing the substance of what the 20 attorney-client privilege communications would be, can 21 you at least confirm whether contingencies in general 22 were discussed with the governor prior to this letter 23 being delivered to you on the 18th? 24 A. No, they were not. 25 Q. I notice that the 18th letter says that it was</p>	<p style="text-align: right;">Page 283</p> <p>1 A. That's handled by my counsel. I -- I believe we do. 2 Q. Do you know if you reviewed the common interest 3 agreement? 4 A. I don't recall if I reviewed it. 5 Q. Were you the one that would have executed it on behalf 6 of the City? 7 A. I might have been. 8 Q. Do you know if you've produced the common interest 9 agreement as part of this litigation? 10 A. I don't know. 11 Q. Would you produce the common interest agreement? 12 MR. SHUMAKER: Look into that one too. 13 MS. GREEN: Thank you. 14 Q. We earlier were discussing some email correspondence 15 from January of 2013 and you had commented in an email 16 -- you characterized PA 436 as a "clear end-around the 17 prior initiative that was rejected by the voters in 18 November." 19 A. Yes. 20 Q. What did you mean when you said that it was a "clear 21 end-around?" 22 A. I had read that in one of the articles and as I said 23 during that discussion, that was my cursory review of 24 the statute and I had read that somewhere. That was 25 the conclusion during that day of going back and forth</p>
<p style="text-align: right;">Page 282</p> <p>1 delivered via hand and electronic delivery. 2 A. Yes. 3 Q. What time did you get the letter on the 18th? 4 A. I don't know, but I think it was around lunchtime. 5 Q. Did you receive it via email or did you receive it via 6 hand-delivery? 7 A. I don't recall depending upon which office. I think 8 someone came in and handed it to me. I think someone 9 on my staff gave it to me. 10 Q. Do you recall receiving it via email? 11 A. I think I probably did receive it, I just think 12 somebody got it before I got into my emails and 13 brought it into me. 14 Q. Do you know if the email that this letter was attached 15 to has been produced to date? 16 A. I do not. 17 Q. Would you be willing to produce the email that 18 attached this letter as part of this? 19 MR. SHUMAKER: Certainly willing to look 20 into it, sure. And it may well very -- 21 MS. GREEN: Have already been. 22 MR. SHUMAKER: -- been produced. 23 Q. Earlier we were discussing the common interest 24 agreement between the City and the state. Do you have 25 an actual written common interest agreement?</p>	<p style="text-align: right;">Page 284</p> <p>1 based upon what I had read at that time. 2 Q. So someone else had concluded that it was a clear 3 end-around and you were agreeing with that 4 characterization? 5 A. I was -- I was parroting in a sense what I had heard 6 and I was expressing the belief that I felt that 7 that's what was said, so yes, at that time that's what 8 I was saying. 9 Q. Who else had said that it was a clear end-around? 10 A. I forget which article that was in. It could have 11 been a Free Press article or News article. I was 12 reading or it could have been a WDIV or Fox 2 13 commentary. I was -- I was trying to find out what 14 was going on because of -- this subject came up of me 15 possibly being a candidate for the Emergency Manager. 16 Q. Are you now trying to say that you did not agree with 17 that characterization? 18 A. No, at that time -- 19 MR. SHUMAKER: Object to the form. Go 20 ahead. 21 A. What I'm saying is at that time that was my 22 characterization. 23 Q. Have you similarly expressed any reservations about 24 PA 436 also being a clear end-around of Article 9, 25 Section 24 of the Michigan Constitution?</p>

<p style="text-align: right;">Page 285</p> <p>1 A. No, at that time I hadn't even -- I hadn't even 2 thought about the Michigan constitutional questions at 3 that time. 4 Q. Have you since expressed any similar reservations? 5 A. No, I have not. 6 Q. Earlier you were handed Exhibit 17 I believe it was, 7 which was a copy of the City's request for admissions. 8 A. Yes. 9 Q. I'm sorry, the City's responses to the Retirement 10 Systems' request for admissions. 11 A. Yes. 12 Q. Do you have a copy in front of you? 13 MR. SHUMAKER: He has the only copy right 14 now. 15 MS. GREEN: I have a few extras because 16 they were -- 17 THE COURT REPORTER: He took it back. He 18 took the original back. 19 MR. DeCHIARA: Oh, I have it? I have it. 20 MS. GREEN: He's got it. We're fine. 21 MR. SHUMAKER: Was it marked? 22 MS. GREEN: It was marked. 23 MR. SHUMAKER: It was marked. You need it 24 for the record. 25 THE WITNESS: Okay.</p>	<p style="text-align: right;">Page 287</p> <p>1 creditors and propose a confirmable plan. 2 Did I read that correctly? 3 A. Yes. 4 Q. And similarly with respect to number 6, the request 5 was for the City to admit that the bankruptcy 6 recommendation proposes among other things to diminish 7 or impair accrued financial benefits of the 8 participants in the Retirement Systems. And the 9 response is the same; correct? 10 A. Yes. 11 Q. Number 12 asks the City to admit that you intend to 12 seek to diminish or impair the accrued financial 13 benefits of the participants in the Retirement Systems 14 through the Chapter 9 case? 15 A. Yes. 16 Q. And you see that distinction between the three 17 questions? 18 A. Yes. 19 Q. Your response to number 5 and number 6 both state that 20 the City seeks a consensual agreement; correct? 21 A. Yes. 22 Q. Your response to number 12, which is whether you would 23 seek to diminish or impair through the Chapter 9 case, 24 does not have the caveat regarding a consensual deal 25 being reached; correct?</p>
<p style="text-align: right;">Page 286</p> <p>1 MR. SHUMAKER: Peter, you want to take this 2 one? 3 MR. DeCHIARA: Thanks. 4 Q. A few moments ago you stated, and I don't want to 5 mischaracterize your testimony, I believe you said if 6 you can't reach a consensual deal, there are "serious 7 questions about the City for a number of reasons." 8 A. Yes. 9 Q. What did you mean when you said that? 10 A. Oh, I meant what do we do? We have a lot of liability 11 on pension and OPEB, we simply don't have the money, 12 we can't go to the capital markets and borrow that 13 magnitude of money, we'd have to try to figure out 14 what to do next. That's all I meant. 15 Q. Okay. I would like to direct your attention to 16 request for admission number five, it's on page 10 of 17 Exhibit 17. The request to admit asked the City to 18 admit that the restructuring proposal proposes to 19 impair or diminish accrued financial benefits of the 20 participants of the Retirement Systems and the City 21 stated it admits that the restructuring proposal 22 contemplates a reduction in accrued financial benefits 23 to participants of the Retirement Systems but seeks 24 agreement and acceptance by plan beneficiaries. The 25 City's intention are to gain consensus with its</p>	<p style="text-align: right;">Page 288</p> <p>1 A. Yes. 2 Q. Why is there that difference? Is it because the City 3 intends to use the cramdown provisions of the 4 bankruptcy code to force a nonconsensual deal? 5 MR. SHUMAKER: Object to the form. 6 A. Without getting into discussions with counsel, I think 7 I can -- I think I can safely say without any waiver 8 that the City intends to preserve all of its rights in 9 answer number 12. 10 Q. A few moments ago when asked about what the City's 11 plan was if a consensual agreement could not be 12 reached, I believe your response was the City 13 currently has no plan if a consensual agreement is not 14 reached; correct? 15 A. That is correct, yes. 16 Q. Sitting here today is it your testimony the City has 17 no backup plan if a consensual deal is not reached? 18 MR. SHUMAKER: Object to the form. 19 A. Sitting here today it's my testimony that we have no 20 plan other -- first we have no plan, but we have no 21 plan or no effort other than to try to reach a 22 consensual resolution. 23 Q. If you don't get that consensual resolution, would you 24 resort to the cramdown provisions that are contained 25 within the bankruptcy code?</p>

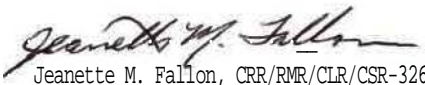
<p style="text-align: right;">Page 289</p> <p>1 A. I don't know. We'll have to -- as I've said before, 2 we'll have to cross that bridge when we get to it. 3 Q. So the City has no present intent to resort to any 4 cramdown provisions? 5 A. We haven't formulated a plan based upon consensus or 6 not yet. 7 Q. Maybe you haven't formulated a plan but have you 8 discussed the option? 9 A. Oh, we've discussed a lot of options. That's why I 10 say we want to reserve all rights. 11 Q. Let's get into the discussions. When was your first 12 discussion regarding using the cramdown provisions if 13 a nonconsensual agreement was not reached? 14 MR. SHUMAKER: Objection. I want to 15 caution the witness about getting into any 16 attorney-client communications. Subject to not 17 revealing anything along those lines, you can answer. 18 A. Without getting into any communications, I'm not sure 19 there was a specific discussion about the cramdown 20 provision. 21 Q. A moment ago I thought you said, and I'm quoting from 22 right in front of me, we discussed a lot of options, 23 that's why I say we want to reserve all rights and you 24 had mentioned that there was an analysis about 25 cramdown provision. So there either was or there was</p>	<p style="text-align: right;">Page 291</p> <p>1 do that. 2 Q. And is it also true that you cannot remember the first 3 time that that option was discussed? 4 A. Ah -- 5 Q. Let's put it this way. Was it prior to the filing on 6 July 18th or is it something you have discussed after 7 the filing? 8 A. I mean, the reason I'm hesitant is I'm a bankruptcy 9 practitioner, I'm certainly aware of nonconsensual 10 creditors being subject to cramdown, I'm just not 11 recalling a specific discussion. I'm not sure we had 12 to have a discussion. 13 Q. Okay. 14 A. Okay, I mean. 15 Q. What other options were discussed? You said you 16 discussed multiple options? 17 A. Well, without getting into negotiations, options 18 regarding which if any classes you could get, which 19 participants, other alternatives, anything short of 20 consensual, what else you might be able to offer, 21 whether you would listen to different factors that go 22 into the payout, whether the beneficiaries would come 23 with a different proposal. A number of things were 24 discussed. 25 Q. Who did you discuss those options with?</p>
<p style="text-align: right;">Page 290</p> <p>1 not. 2 A. I'm not -- what I'm trying to -- my testimony is I'm 3 not sure that we specifically discussed if we can't 4 get a consensual resolution, we go to cramdown. There 5 were other options that were discussed -- 6 Q. Okay. 7 A. -- including that. I don't want to give you a binary 8 response. 9 Q. So I have two follow-up questions then. 10 A. Uh-huh. 11 Q. Number one, when was the cramdown issue discussed? 12 A. I don't recall a -- we -- without discussing what was 13 said with counsel, I don't recall -- 14 MR. SHUMAKER: The question is when. 15 THE WITNESS: When? 16 A. We haven't -- I don't want to be unclear. There 17 hasn't been a specific cramdown discussion, but 18 cramdown is one of the options has been mentioned. We 19 have not sought to make a determination of if and when 20 we would pursue that alternative. 21 Q. Well, I don't suppose you're willing to offer any sort 22 of assurance today that the City would not resort to 23 the cramdown provisions if a consensual deal was not 24 struck? 25 A. I just said we want to preserve all options. I can't</p>	<p style="text-align: right;">Page 292</p> <p>1 A. Our counsel and investment bankers. 2 Q. Have you ever discussed -- so internally you discussed 3 those options? 4 A. Yes, yes, yes, yes. 5 Q. Have you discussed those options with the Retirement 6 Systems? 7 A. Have I personally discussed those with the Retirement 8 Systems? I don't recall. I don't think so. 9 Q. Have you discussed those options with any of the 10 actual individuals within the Retirement Systems? 11 A. I may have. 12 Q. And who would that be? 13 A. I don't remember. There are so -- I've had over -- I 14 think at this point I've had over 200 meetings, some 15 of those including individual members of the various 16 groups and that may have come up. 17 Q. So you've said several times throughout today and in 18 your responses to our discovery that the City's intent 19 and the City's hope, I think you used the word hope, 20 would be to get a consensual agreement. 21 A. Yes. 22 Q. And I think I recall you saying that your reading of 23 Article 9, Section 24 is that it would permit 24 consensual contractual negotiations? 25 A. I believe that's a fair characterization.</p>



<p style="text-align: right;">Page 293</p> <p>1 Q. If that cannot be achieved, would you agree that 2 Article 9, 24, Section 24, would prohibit any other 3 impairment or diminution of the pension benefits? 4 A. No. 5 MR. SHUMAKER: Objection, calls for 6 speculation and for a legal conclusion. 7 Q. And why would you disagree with that? 8 A. For all the reasons we discussed earlier today and in 9 addition I think it calls for a legal conclusion as 10 far as what the import of 436 versus that provision 11 is. 12 Q. Let's talk a little bit about the Chapter 9 process 13 itself. 14 A. Yes. 15 Q. You seek authorization from the governor, step one? 16 A. Yes. 17 Q. Step two, the governor gives his authorization? 18 A. Yes. 19 Q. And then the City, you acting on behalf of the City, 20 are responsible for filing the Chapter 9 case itself; 21 correct? 22 A. Yes. 23 Q. And after you file the case, you and your attorneys 24 are responsible for the day-to-day activities in 25 carrying out that Chapter 9 case; correct?</p>	<p style="text-align: right;">Page 295</p> <p>1 Q. That's true. The state court litigation was not until 2 July, you mentioned in your testimony that you were 3 throughout the month of June there were concerns about 4 "losing control." 5 A. June through -- I think the testimony was at various 6 time frames, June 14th through July 3rd and June 1 7 through July 18th, and I was saying those time frames 8 there are a number of different issues. In the June 9 time frame I seem to remember, as in the prior 10 deposition you attended, we reached an agreement in 11 principal, then things started to go off the rails 12 with Syncora the following Monday on June 17th so 13 that's what my discussion was. 14 Q. And so consistent with that you said you agreed there 15 were concerns that throughout June things were 16 beginning to spin out of control and I think you used 17 the words losing control? 18 A. Yes, in June we were dealing with a number of 19 different issues, but we were trying to manage them as 20 best we could and then for the better part of 21 June/July we started being hit with a number of pieces 22 of litigation that just kept coming over the transom 23 and it appeared that we were starting to lose the 24 initiative. 25 Q. Okay. You mentioned earlier when you were</p>
<p style="text-align: right;">Page 294</p> <p>1 A. Yes. 2 Q. And in a Chapter 9 case only the municipality itself 3 can propose a plan of adjustment; correct? 4 A. Correct. 5 Q. So ultimately it will be the City that proposes a plan 6 of adjustment? 7 A. I believe so. 8 Q. And ultimately it will be the City that places in 9 front of the Court a method to deal with its pension 10 debt? 11 A. I believe so. 12 Q. And it is only the Court -- after the City has first 13 proposed the plan, it is the Court that can confirm 14 that plan? 15 A. Yes. 16 Q. But all the steps leading up to that confirmation are 17 acts taken by the City; correct? 18 A. I believe that's the Chapter 9 scheme. 19 Q. You mentioned earlier that in the June time frame 20 there were certain pieces of litigation that were all 21 coming to a head; correct? I'm referring to the 22 Syncora litigation and the Michigan state court 23 litigation. 24 A. Yeah, but I think we were talking about July when the 25 state court litigation began.</p>	<p style="text-align: right;">Page 296</p> <p>1 characterizing the losing control phase of what was 2 going on -- 3 A. Uh-huh. 4 Q. -- you said that someone counseled you that it was 5 irresponsible to be delaying the bankruptcy filing? 6 MR. SHUMAKER: Object to the form. 7 A. Uh-huh. 8 Q. Who was it that accused you of being irresponsible for 9 holding off on the bankruptcy filing? 10 A. Well, I wouldn't characterize it as accusation. 11 Q. Who counseled you that it was irresponsible? 12 A. It was -- 13 MR. SHUMAKER: To the extent that it was 14 counsel, I don't want you to get into the 15 communication. 16 A. Okay, it was a privileged communication. 17 Q. So an attorney at Jones Day? 18 A. No, not necessarily. It -- various discussions with a 19 number of my team members including attorneys, 20 investment bankers and consultants. 21 Q. So during that time frame what was the event that 22 finally pushed you to actually start preparing the 23 documents to file the bankruptcy petition? 24 A. I don't know if there was an event that pushed me, but 25 I think there was a general consensus that if things</p>

<p style="text-align: right;">Page 297</p> <p>1 continued with a number of different lawsuits going on 2 simultaneously, our own litigation against Syncora, 3 that things were spiralling out of control. 4 Q. And I'm assume that during that time frame it was you 5 that directed Jones Day to begin preparing the actual 6 documents that would eventually be filed in the 7 bankruptcy court; correct? 8 A. Yes. 9 Q. Do you know when you told them to go ahead and start 10 preparing the paperwork? 11 MR. SHUMAKER: Objection, asked and 12 answered, but you can answer again. 13 A. I'm not sure the exact date, but it was probably 14 sometime in that July time frame. Yeah. 15 Q. And I'm sure we don't just throw documents like that 16 together. Do you know how long they worked on the 17 documents before they were filed? 18 MR. SHUMAKER: Object to the form. 19 A. No, but I suspect it was at least several weeks. 20 Q. Do you recall when the first draft of the petition or 21 the accompanying documents was provided to you for 22 your review? 23 A. No. But I suspect it may have been -- I don't recall. 24 Q. Do you recall reviewing multiple drafts, for instance? 25 A. Oh, I think I saw several drafts, yeah.</p>	<p style="text-align: right;">Page 299</p> <p>1 MR. SHUMAKER: Objection to form. 2 A. Well, that's your assumption, but the reality is you 3 can commence a bankruptcy as you know by filing a 4 petition without other documents. So if the 5 contingency you're talking about, depending upon what 6 it is, there may have been other things we would have 7 had to factor too and edit, I just don't know. 8 Q. You were asked earlier about an email from 9 Corinne Ball -- 10 A. Yes. 11 Q. -- where she mentioned the Bloomberg Foundation? 12 A. Yes. 13 Q. Did the Bloomberg Foundation ever end up providing any 14 funds with regard to either your salary or the 15 Emergency Manager -- the Emergency Manager -- 16 A. Effort. 17 Q. -- project, if you will? 18 A. No, in fact -- 19 MR. SHUMAKER: Object to form. 20 A. -- in fact, I think the memo that followed on that 21 memo said no, I don't want to do that. 22 Q. Do you know if any other private party has provided 23 funding in addition to your salary which has already 24 been made public? Do you know if there were any other 25 private parties that provided funding in addition to</p>
<p style="text-align: right;">Page 298</p> <p>1 Q. If the governor had included a contingency on his July 2 18th letter -- 3 A. Uh-huh. 4 Q. -- would you have had to rework the petition and the 5 corresponding papers? 6 MR. SHUMAKER: Objection, calls for 7 speculation. 8 A. That -- that depends upon what the contingency was. 9 Q. If there was, for example, some sort of contingency 10 regarding the pensions, did you have a separate 11 version of the documents -- 12 A. Oh. 13 Q. -- in case there have a contingency placed by the 14 governor? 15 A. I don't -- I don't recall if it would have required a 16 separate version or if it would have required any 17 editing if any at that point. 18 Q. Well, you testified that you got his -- the governor's 19 approval letter somewhere around lunchtime. 20 A. Right. 21 Q. The petition was filed just a few hours later. 22 A. Right. 23 Q. So I'm assuming that the papers were ready to go 24 because it was just a few hours of turnaround time; 25 correct?</p>	<p style="text-align: right;">Page 300</p> <p>1 that? 2 A. Not to me. 3 (Marked Exhibit No. 19.) 4 Q. I would like to give you Exhibit Number 19. This is 5 the City's interrogatory responses -- 6 A. Yes. 7 Q. -- to the Retirement Systems' discovery requests. 8 A. Yes. 9 Q. After page 12 there's a verification by you. 10 A. Yes. 11 Q. Is that your signature? 12 A. Yes, should be. 13 Q. On page 10. 14 A. Yes. 15 Q. On page 10 there's an interrogatory regarding private 16 funds as defined in Section 93(F) of PA 436. 17 A. Right. 18 MR. SHUMAKER: You're referring to number 19 6, counsel? 20 MS. GREEN: Yes. 21 Q. At this time are you aware of any private funds as 22 defined in PA 436 that have been used to supplement 23 your salary or compensation? 24 A. Subject to the answer, there are no private funds. 25 All I get is the compensation that's provided to me</p>



<p style="text-align: right;">Page 301</p> <p>1 pursuant to my contract and in fact I have not been</p> <p>2 seeking any benefits under that contract such as</p> <p>3 commuting expense, healthcare, malpractice insurance,</p> <p>4 directors and officers insurance. In fact, I've been</p> <p>5 subsidizing my efforts out of my own pocket.</p> <p>6 MS. GREEN: If that situation changes and</p> <p>7 private funds are provided, I would request a standing</p> <p>8 request for supplementation to be made aware if that</p> <p>9 happens.</p> <p>10 MR. SHUMAKER: I'm sure --</p> <p>11 MS. GREEN: I'm directing that to your</p> <p>12 counsel. You don't have to personally let me know.</p> <p>13 MR. SHUMAKER: We'll look into that if that</p> <p>14 would happen.</p> <p>15 MS. GREEN: I appreciate that.</p> <p>16 THE WITNESS: I have not asked and there is</p> <p>17 no intent or expectation in that regard.</p> <p>18 Q. The -- I have one last question.</p> <p>19 We talked about the draft of the petition</p> <p>20 being prepared by Jones Day. There were media reports</p> <p>21 that the City was planning to file on Friday, July</p> <p>22 19th. Do you recall seeing those?</p> <p>23 A. Yes.</p> <p>24 Q. What was it that made the City -- that prompted the</p> <p>25 City to file them instead on July 18th at 4:06 p.m.?</p>	<p style="text-align: right;">Page 303</p> <p>1 counsel present?</p> <p>2 A. No.</p> <p>3 Q. And are you not willing to answer even what topics --</p> <p>4 in broad categories of topics that were discussed?</p> <p>5 MR. SHUMAKER: Again, to the extent that</p> <p>6 they reveal what the communications are, I'm going to</p> <p>7 instruct him not to answer.</p> <p>8 Q. Do you know if anyone else from your team had</p> <p>9 conversations, outside of conversations with counsel,</p> <p>10 relating to the timing of the filing?</p> <p>11 A. There may have been conversations. I'm not aware of</p> <p>12 any specific ones.</p> <p>13 MS. GREEN: I don't have any further</p> <p>14 questions. Do you have follow-up?</p> <p>15 MR. SHUMAKER: Thank you, counsel.</p> <p>16 THE VIDEOGRAPHER: This concludes the</p> <p>17 deposition and we're going off the record at 6:12 p.m.</p> <p>18 (Deposition adjourned at 6:12 p.m.)</p> <p>19 * * *</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 302</p> <p>1 A. Counselor, just because they're media reports doesn't</p> <p>2 mean that that was accurate.</p> <p>3 Q. Was there ever a plan to file them on the 19th?</p> <p>4 Setting aside what the media reported, was there a</p> <p>5 plan to file them on the 19th?</p> <p>6 A. No, my plan was to have the permission, the authority,</p> <p>7 to file them and make that call at some point after I</p> <p>8 transmitted my letter of July 16.</p> <p>9 Q. Were any of your conversations on the 18th or the 17th</p> <p>10 relating to the timing of the petition?</p> <p>11 A. Outside of communications with counsel?</p> <p>12 MR. SHUMAKER: I'm going to object to the</p> <p>13 form just -- I'm not following your question,</p> <p>14 counselor.</p> <p>15 Q. Were any of the conversations that you had on the 17th</p> <p>16 or the 18th with, for instance, the governor, we've</p> <p>17 talked about these conversations, were any of those</p> <p>18 conversations relating to the timing of the filing</p> <p>19 itself?</p> <p>20 MR. SHUMAKER: Again, to the extent that</p> <p>21 you're going to go into the content of the</p> <p>22 conversations where counsel was present between</p> <p>23 Mr. Orr and the governor, I'm going to instruct him</p> <p>24 not to answer.</p> <p>25 Q. Were there any conversations that you had without</p>	<p style="text-align: right;">Page 304</p> <p>1 State of Michigan)</p> <p>2 County of Genesee)</p> <p>3 Certificate of Notary Public</p> <p>4 I certify that this transcript is a complete, true and</p> <p>5 correct record of the testimony of the witness held in this</p> <p>6 case.</p> <p>7 I also certify that prior to taking this deposition,</p> <p>8 the witness was duly sworn or affirmed to tell the truth.</p> <p>9 I further certify that I am not a relative or an</p> <p>10 employee of or an attorney for a party; and that I am not</p> <p>11 financially interested, directly or indirectly, in the</p> <p>12 matter.</p> <p>13 WITNESS my hand this 19th day of September,</p> <p>14 2013.</p> <p>15</p> <p>16</p> <p>17 </p> <p>18 Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267</p> <p>19 Certified Realtime Reporter</p> <p>20 Registered Merit Reporter</p> <p>21 Certified LiveNote Reporter</p> <p>22 Certified Shorthand Reporter</p> <p>23 Notary Public, Genesee, Michigan</p> <p>24 Acting in Oakland County, Michigan</p> <p>25 My Commission Expires: 9-19-18</p>

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<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Our Assignment No. 471048/NYC 337176</p> <p>4 Case Caption: In re City of Detroit, Michigan</p> <p>5</p> <p>6 DECLARATION UNDER PENALTY OF PERJURY</p> <p>7</p> <p>8 I declare under penalty of perjury that I have read</p> <p>9 the entire transcript of my Deposition taken in the</p> <p>10 captioned matter or the same has been read to me, and the</p> <p>11 same is true and accurate, save and except for changes</p> <p>12 and/or corrections, if any, as indicated by me on the</p> <p>13 DEPOSITION ERRATA SHEET hereof, with the understanding that</p> <p>14 I offer these changes as if still under oath.</p> <p>15 Signed on the ____ day of ____, 20__.</p> <p>16 _____</p> <p>17 KEVYN ORR</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. ____ Line No. ____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: _____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 KEVYN ORR</p>
<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. ____ Line No. ____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: _____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 KEVYN ORR</p>	



EXHIBIT C

Page 1	Page 3
<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 -----X</p> <p>6 :</p> <p>7 In re : Chapter 9</p> <p>8 CITY OF DETROIT, MICHIGAN, : Case No. 13-53846</p> <p>9 Debtor. : Hon. Steven W. Rhodes</p> <p>10 -----X</p> <p>11</p> <p>12 The videotaped deposition of GAURAV</p> <p>13 MALHOTRA, called for examination, taken pursuant to</p> <p>14 the Federal Rules of Civil Procedure of the United</p> <p>15 States District Courts pertaining to the taking of</p> <p>16 depositions, taken before JULIANA F. ZAJICEK, CSR No.</p> <p>17 84-2604, a Certified Shorthand Reporter of said State</p> <p>18 of Illinois, at the offices of Jones Day, Suite 3500,</p> <p>19 77 West Wacker Drive, Chicago, Illinois, on</p> <p>20 September 20, 2013, at 9:30 a.m.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 LOWENSTEIN SANDLER LLP,</p> <p>4 (65 Livingston Avenue,</p> <p>5 Roseland, New Jersey 07068,</p> <p>6 973-597-2346), by:</p> <p>7 MR. S. JASON TEELE,</p> <p>8 steele@lowenstein.com,</p> <p>9</p> <p>10 appeared on behalf of AFSCME;</p> <p>11</p> <p>12 CLARK HILL PLC,</p> <p>13 (151 South Old Woodward, Suite 200,</p> <p>14 Birmingham, Michigan 48009,</p> <p>15 248-642-9692), by:</p> <p>16 MR. JOHN R. STEVENSON,</p> <p>17 jstevenson@clarkhill.com,</p> <p>18</p> <p>19 appeared telephonically on behalf of the</p> <p>20 Police and Fire Retirement System of the</p> <p>21 City of Detroit and the General Retirement</p> <p>22 System of the City of Detroit;</p> <p>23</p> <p>24 WEIL, GOTSHAL & MANGES LLP,</p> <p>25 (767 Fifth Avenue,</p> <p>26 New York, New York 10153,</p> <p>27 212-310-8257), by:</p> <p>28 MS. DANA KAUFMAN,</p> <p>29 dana.kaufman@weil.com,</p> <p>30</p> <p>31 appeared telephonically on behalf of</p> <p>32 Fidelity Guaranty Insurance Company;</p> <p>33</p> <p>34 LIPPITT O'KEEFE, PLLC,</p> <p>35 (370 East Maple, 3rd Floor,</p> <p>36 Birmingham, Michigan 48009,</p> <p>37 248-646-8292), by:</p> <p>38 MR. RYAN C. PLECHA,</p> <p>39 rplecha@lippittokeefe.com,</p> <p>40</p> <p>41 appeared telephonically on behalf of the</p> <p>42 Detroit Retired Police and Fire Fighters</p> <p>43 Association, Detroit Retired City</p> <p>44 Employees Association, Don Taylor,</p> <p>45 individually and as president of the</p> <p>46 RDPFFA, and Shirley Lightsey, individually</p> <p>47 and as president of the DRCEA;</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 JONES DAY,</p> <p>3 (51 Louisiana Avenue, N.W.,</p> <p>4 Washington, D.C. 20001-2113,</p> <p>5 202-897-3939), by:</p> <p>6 MR. GEOFFREY S. STEWART,</p> <p>7 gstewart@jonesday.com;</p> <p>8 MR. CHRISTOPHER DiPOMPEO,</p> <p>9 cdipompeo@jonesday.com,</p> <p>10</p> <p>11 appeared on behalf of the Debtor</p> <p>12 and the witness;</p> <p>13</p> <p>14 LATHAM & WATKINS LLP,</p> <p>15 (355 South Grand Avenue,</p> <p>16 Los Angeles, California 90071-1560,</p> <p>17 213-485-1234), by:</p> <p>18 MR. WAYNE S. FLICK,</p> <p>19 wayne.s.flick@lw.com,</p> <p>20</p> <p>21 appeared telephonically on behalf of</p> <p>22 Ernst & Young;</p> <p>23</p> <p>24 DENTONS,</p> <p>25 (233 South Wacker Drive, Suite 7800,</p> <p>26 Chicago, Illinois 60606-6306,</p> <p>27 312-876-2572), by:</p> <p>28 MS. LEAH R. BRUNO,</p> <p>29 leah.bruno@dentons.com;</p> <p>30 MS. MELISSA A. ECONOMY,</p> <p>31 melissa.economy@dentons.com,</p> <p>32</p> <p>33 appeared on behalf of Retirees Committee;</p> <p>34</p> <p>35 COHEN WEISS AND SIMON LLP,</p> <p>36 (330 West 42nd Street,</p> <p>37 New York, NY 10036-6979,</p> <p>38 212-356-0216), by:</p> <p>39 MR. PETER D. DeCHIARA,</p> <p>40 pdechiara@cwsny.com,</p> <p>41</p> <p>42 appeared telephonically on behalf of the</p> <p>43 International Union, UAW;</p> <p>44</p> <p>45</p> <p>46</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 STROBL & SHARP, P.C.,</p> <p>4 (300 East Long Lake Road, Suite 200,</p> <p>5 Bloomfield Hills, Michigan 48304-2376,</p> <p>6 248-540-2300), by:</p> <p>7 MS. MEREDITH E. TAUNT,</p> <p>8 mtaunt@stroblpc.com,</p> <p>9</p> <p>10 appeared telephonically on behalf of the</p> <p>11 Retired Detroit Police Members</p> <p>12 Association.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> 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<p style="text-align: right;">Page 5</p> <p>1 MS. BRUNO: Do you want to swear in the witness. 2 (WHEREUPON, the witness was duly 3 sworn.) 4 MS. BRUNO: Good morning, Mr. Malhotra. My name 5 is Leah Bruno. I am at the Dentons firm representing 6 the Committee. And we are here to take your 7 deposition today. 8 Before we go into the preliminaries, I'm 9 going to ask that everyone in the room and on the 10 phone just identify themselves for the record. 11 We'll start to my left. 12 MR. STEELE: Jason Steele from Lowenstein 13 Sandler. I represent AFSCME. 14 MR. DiPOMPEO: Christopher DiPompeo from Jones 15 Day. We represent the Debtor, the City of Detroit, 16 and the witness. 17 MR. STEWART: Jeff Stewart, Jones Day, the 18 Debtor and the witness. 19 THE WITNESS: Gaurav Malhotra. Ernst & Young. 20 MS. BRUNO: That's everybody in the room. So if 21 the people on the phone want to give it a try. 22 MR. FLICK: This is Wayne Flick from Latham & 23 Watkins, unfortunately stuck in Los Angeles due to 24 flight problems.</p>	<p style="text-align: right;">Page 7</p> <p>1 GAURAV MALHOTRA, 2 called as a witness herein, having been first duly 3 sworn, was examined and testified as follows: 4 EXAMINATION 5 BY MS. BRUNO: 6 Q. Mr. Malhotra, I understand that you were 7 deposed recently, so I know you've been through the 8 drill, but we'll just set a couple of the ground rules 9 here. 10 If I ask you any questions that you don't 11 understand, please ask me. I'm not trying to trick 12 you. I want us to understand one another. So if you 13 need me to clarify any of my questions, I'm happy to 14 do so. 15 When responding to any questions that I 16 ask you, please wait for me to finish the question and 17 respond with a verbal answer so the court reporter can 18 get your answer and we can have an accurate 19 transcript. 20 Do those sound okay to you? 21 A. Yes. 22 Q. Okay. What did you do to prepare for your 23 deposition today? 24 A. I had a call with the team here at -- from</p>
<p style="text-align: right;">Page 6</p> <p>1 (WHEREUPON, there was a short 2 interruption.) 3 MS. BRUNO: Why don't we pick up where we left 4 off. 5 MR. FLICK: This is Wayne Flick from Latham & 6 Watkins on behalf of Ernst & Young. 7 MR. DeCHIARA: Peter DeChiara from Cohen, Weiss 8 & Simon, LLC on behalf of the International Union, 9 UAW. 10 MR. STEVENSON: John Stevenson from Clark Hill 11 on behalf of the Police and Fire Retirement System of 12 the City of Detroit and the General Retirement System 13 of the City of Detroit. 14 MR. PLECHA: Ryan Plecha from Lippitt O'Keefe 15 representing the Retiree Association parties. 16 MS. TAUNT: Meredith Taunt from Strobl & Sharp 17 representing the Retired Detroit Police Members 18 Association. 19 MS. BRUNO: Is that everyone on the phone? 20 MS. KAUFMAN: This is Dana Kaufman from Weil 21 Gotshal & Manges representing Financial Guaranty 22 Insurance Company. 23 MS. BRUNO: Okay. If that's everyone, we'll 24 move forward, finally, here.</p>	<p style="text-align: right;">Page 8</p> <p>1 Jones Day and Latham & Watkins a couple of days ago 2 for about an hour and a half. 3 Q. Was anyone from the City, a non-lawyer on 4 the call? 5 A. No. 6 Q. Let me backtrack. 7 Anyone not at Jones Day or Latham & 8 Watkins on the call? 9 A. From EY, I think we had somebody attending 10 from our general counsel's office, Marg Hosbach, yes. 11 Q. I'm sorry. Who was that? 12 A. Marg Hosbach is her name. 13 Q. Thank you. 14 Anyone else? 15 A. No. 16 Q. And how long was that call? 17 A. About an hour and a half. 18 Q. What did you discuss during that 19 conversation? 20 MR. STEWART: Objection; instruct him not to 21 answer. 22 MR. FLICK: Join. 23 BY MS. BRUNO: 24 Q. What day did you have that call?</p>



<p style="text-align: right;">Page 9</p> <p>1 A. We had it on Wednesday of this week.</p> <p>2 Q. Did you review anything in preparation for</p> <p>3 today?</p> <p>4 A. For today?</p> <p>5 Q. Yes.</p> <p>6 A. I looked at my declaration and I think</p> <p>7 that's generally about it, in terms of reviewing</p> <p>8 information for today.</p> <p>9 Q. Did you review your prior deposition?</p> <p>10 A. No.</p> <p>11 Q. Have you seen your prior deposition?</p> <p>12 A. I think I received it, but I haven't gone</p> <p>13 through it.</p> <p>14 Q. Have you reviewed any of the other</p> <p>15 depositions taken in this matter?</p> <p>16 A. In this matter?</p> <p>17 Q. In this bankruptcy.</p> <p>18 A. I have received them. I haven't gone</p> <p>19 through them.</p> <p>20 Q. Have you discussed the testimony given</p> <p>21 with anyone -- excuse me. Let me rephrase that.</p> <p>22 Have you discussed the contents of those</p> <p>23 depositions with anyone?</p> <p>24 MR. STEWART: You can answer yes or no.</p>	<p style="text-align: right;">Page 11</p> <p>1 you mean by "report"?</p> <p>2 BY MS. BRUNO:</p> <p>3 Q. A written declaration or report on behalf</p> <p>4 of your corporation that you are working for.</p> <p>5 A. I think so. I don't recall off the top of</p> <p>6 my head, but I have other bankruptcy cases that are</p> <p>7 ongoing where I have submitted written reports or --</p> <p>8 yeah, specific information that is pertinent to the</p> <p>9 case or -- or Ernst & Young's engagement in connection</p> <p>10 with a case. So, I don't know if that's what you are</p> <p>11 referring to with specific questions on sworn</p> <p>12 testimony, but I have provided specific information in</p> <p>13 other Chapter 11 cases that I'm involved in.</p> <p>14 Q. Focusing on Chapter 9 bankruptcies, can</p> <p>15 you tell me what Chapter 9 bankruptcies you have</p> <p>16 provided such information in?</p> <p>17 A. None.</p> <p>18 Q. Is this the first Chapter 9 bankruptcy</p> <p>19 you've done work on?</p> <p>20 A. Yes.</p> <p>21 Q. Before your work for the City of Detroit</p> <p>22 in this matter, do you have experience with working</p> <p>23 with other governmental clients?</p> <p>24 A. I do.</p>
<p style="text-align: right;">Page 10</p> <p>1 BY THE WITNESS:</p> <p>2 A. No.</p> <p>3 BY MS. BRUNO:</p> <p>4 Q. I've read your prior deposition, so I'm</p> <p>5 going to endeavor not to tread the same ground that</p> <p>6 you've already covered. There may be some overlap due</p> <p>7 to necessity, but I am going to do my best not to ask</p> <p>8 you the same series of questions and cover the same</p> <p>9 territory as previously discussed of you. So, if you</p> <p>10 give me a little leeway, I will do my best not to</p> <p>11 waste your time today. Okay.</p> <p>12 I understand that you -- that was your</p> <p>13 first deposition two weeks ago, is that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And have you ever provided sworn testimony</p> <p>16 in any setting outside of a deposition?</p> <p>17 A. No.</p> <p>18 Q. Your deposition on September 9th was the</p> <p>19 first time you've provided any type of sworn testimony</p> <p>20 in a bankruptcy proceeding?</p> <p>21 A. Yes.</p> <p>22 Q. Are there instances where you have</p> <p>23 submitted written reports in other bankruptcies?</p> <p>24 MR. STEWART: Can you define so he is clear what</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Approximately how many?</p> <p>2 A. I would say the most relevant one is</p> <p>3 Detroit public schools.</p> <p>4 Q. Are there others besides Detroit Public</p> <p>5 Schools?</p> <p>6 A. I am involved in other situations that are</p> <p>7 in the public sector currently.</p> <p>8 Q. Can you tell me what those are?</p> <p>9 A. No. Those are confidential.</p> <p>10 Q. You have not been disclosed publicly in</p> <p>11 any of those matters?</p> <p>12 A. That is correct.</p> <p>13 Q. Outside of the City of Detroit matter, are</p> <p>14 there -- and the ones that you are working on</p> <p>15 currently, are there any other governmental clients</p> <p>16 you have done work for?</p> <p>17 A. Personally, no. I think those are the</p> <p>18 ones that -- that I can recall.</p> <p>19 Q. Focusing on the Detroit Public Schools,</p> <p>20 what type of work did you personally do on that</p> <p>21 matter?</p> <p>22 A. I think the -- our engagement letter and</p> <p>23 the contents thereof are what we did at Detroit Public</p> <p>24 Schools. The overall specific scope is I would</p>



<p style="text-align: right;">Page 13</p> <p>1 believe generally confidential. However, I can give 2 you a broad understanding that it was generally 3 related to liquidity forecasting and looking at 4 different assumptions with respect to cost saving 5 measures, and I think that's all I will say on that. 6 Q. Is that engagement still ongoing? 7 A. I'd rather not answer that. 8 Q. When did that engagement begin? 9 A. It was in 2011, is my recollection. It 10 could have been earlier, but that's my general 11 recollection. 12 Q. Mr. Malhotra, I'm going to direct you to 13 your declaration, which was previously marked as 14 Exhibit 1 in your prior deposition. 15 Do you have a copy of it or would you like 16 me to provide it to you? 17 A. I would like you to provide it to me, 18 please. 19 (WHEREUPON, the document was tendered 20 to the witness.) 21 BY MS. BRUNO: 22 Q. Directing your attention to Paragraph 6, 23 Mr. Malhotra, you are describing some of your 24 experience in Paragraph 6. And the second sentence</p>	<p style="text-align: right;">Page 15</p> <p>1 MR. STEWART: Objection. 2 BY MS. BRUNO: 3 Q. My -- what I'm trying to get to, was there 4 an RFP or how were you contacted about that engagement 5 initially? 6 A. It was based on the work we did at Detroit 7 Public Schools is the way that we had discussions with 8 the Mayor's office, with the State Treasurer's office 9 and thereby our engagement or our work got initiated 10 with respect to liquidity forecasting. 11 Q. I just need some clarification on your 12 answer. 13 When you say that you had discussions with 14 the Mayor's office and the State Treasurer's office, 15 were those discussions related to Detroit Public 16 Schools or are these new discussions that were 17 initiated with respect to the City of Detroit 18 bankruptcy? 19 A. The latter. 20 Q. The latter? 21 A. I'm sorry. Nothing related to the 22 bankruptcy. It was related to the City of Detroit. 23 Just to clarify, it wasn't related to the City of 24 Detroit bankruptcy.</p>
<p style="text-align: right;">Page 14</p> <p>1 states, "In addition, in the public sector, I was 2 involved in the recent restructuring efforts of 3 Detroit Public Schools," as you previously testified, 4 that's correct, correct? 5 A. Yes. 6 Q. Is there any other experience outside of 7 Detroit Public Schools that you can publicly disclose? 8 A. In the government sector? 9 Q. In the public sector. 10 A. In the public sector, I would not want to 11 disclose any of the other engagements. 12 Q. And those are all engagements that are 13 currently ongoing? 14 A. Up to a certain extent, yes, there is work 15 that's pending or about to get initiated or in certain 16 cases, certain aspects have been completed, but in 17 general, yes. 18 Q. Paragraph 7 of your declaration states 19 that you were engaged by the City in May of 2011, 20 correct? 21 A. That's what it states, yes. 22 Q. Is that an accurate statement? 23 A. Yes. 24 Q. How was that engagement undertaken?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Correct. 2 And what was the nature of those 3 discussions? Can you give me so more information? 4 A. Sure. It was generally to see how -- how 5 EY could help with looking at the City's liquidity 6 position and helping forecast what the liquidity 7 position could be over a short period of time. 8 Q. Approximately when were those discussions? 9 When did those discussions take place? 10 A. I think it was right around this 11 particular timeframe, around the May of 2011, is my 12 recollection. 13 Q. Who were those discussions -- who did 14 those discussions involve? Did they -- from the 15 Ernst & Young side, did they involve you? 16 A. Yes. 17 Q. Or someone else? 18 A. Me. 19 Q. You solely or you in addition to other 20 people? 21 A. It was generally myself. 22 Q. On the side of the City, who was involved 23 in those initial discussions? 24 A. Now we are going back some time, but I</p>



<p style="text-align: right;">Page 17</p> <p>1 would think it would have been the former Chief of 2 Staff Kirk Lewis, it would have been the former Chief 3 Operating Officer Chris Brown. I think those are the 4 folks at least I remember. It could have been the 5 Mayor, but I don't recall at this juncture. 6 Q. And can you give me some more detail on 7 what you understood your engagement would include in 8 those initial discussions? 9 A. Sure. It was just to get an understanding 10 of what the City's cash flow position was and what the 11 short-term outlook for the City's liquidity 12 projections could look like. 13 Q. Was there any discussion about the 14 prospect of the City filing Chapter 9 bankruptcy in 15 those initial discussions? 16 A. No. 17 Q. Prior to entering into the engagement, was 18 there any formal presentation or pitch provided by 19 Ernst & Young? 20 A. I do not recall. 21 Q. If there was one, would you have been part 22 of it? 23 A. Yes. 24 Q. Mr. Malhotra, I'm going to hand you what</p>	<p style="text-align: right;">Page 19</p> <p>1 original agreement, correct? 2 A. That is correct. 3 Q. In your prior deposition, there was a 4 request made for the production of the original 5 engagement letter. 6 Do you recall that? 7 A. Possibly. I don't recall specifically 8 because there were a lot of requests, but this -- I 9 assume this is the engagement letter you are referring 10 to, but if there is more, probably -- 11 MR. STEWART: It was memorialized in a letter 12 you responded to. 13 THE WITNESS: Okay. 14 BY MS. BRUNO: 15 Q. Mr. Malhotra, I'll represent to you this 16 is the only document that we've been able to locate 17 with respect to the Ernst & Young engagement, so I'm 18 going to have to use this to kind of backtrack because 19 I don't have a copy of the original engagement letter. 20 A. Sure. 21 Q. And we'll request that an additional 22 effort be made to produce that to your counsel. 23 MR. STEWART: If you could, just do that in a 24 letter after we are done, so otherwise it gets</p>
<p style="text-align: right;">Page 18</p> <p>1 we're going to mark as Exhibit 8. 2 MR. TEELE: I'm sorry. What number? 3 MS. BRUNO: 8. 4 (WHEREUPON, a certain document was 5 marked Malhotra Deposition 6 Exhibit No. 8, for identification, as 7 of 09/20/13.) 8 BY MS. BRUNO: 9 Q. And you can take your time to look at this 10 document. I'm going to ask you some questions about 11 it. Let me know when you are ready to proceed with 12 some questions. 13 A. Sure. I'm ready. 14 Q. Mr. Malhotra, I'll represent to you that 15 I've handed you what is titled Amendment No. 7 to 16 Statement of Work. 17 Can you tell me what this document is? 18 A. This is our most recent engagement letter 19 with the City. 20 Q. And reviewing the introductory paragraph, 21 it is clear that there was an original agreement, 22 correct? 23 A. That is correct. 24 Q. And that this is Amendment No. 7 to that</p>	<p style="text-align: right;">Page 20</p> <p>1 confusing to try and go back to the transcript. 2 MS. BRUNO: We will do that. 3 BY MS. BRUNO: 4 Q. Can you tell me, Mr. Malhotra, in the 5 original SOW or original agreement, was there similar 6 to what's in this a bullet point listing of the items 7 that would be included in the original statement of 8 work? 9 A. Yes. 10 Q. Who drafted the specific items that would 11 be involved in the original statement of work? 12 A. It would have been myself along with the 13 rest of the team. 14 Q. When you say "the rest of the team," who 15 are you referring to? 16 A. I would say the rest of the EY team that 17 would have gone through all of our quality review team 18 that looks at any scope of work with respect to what 19 we are putting out in general would be the folks from 20 our EY standpoint. 21 Q. How is that process, and what I'm 22 referring to is the identify -- let me start over. 23 How does that process work, and I'm 24 talking about the identification of the specific</p>



<p>Page 21</p> <p>1 elements of the statement of work, what was the 2 process used in this matter? 3 MR. STEWART: Objection. 4 BY THE WITNESS: 5 A. In -- well, maybe if I can give you 6 specifics, so in terms of how this statement of work 7 is put together, which in general is the process that 8 we go through for any statement of work, is that we 9 highlight what work the client may require and what 10 work we may be -- what we will be willing to do. 11 Generally the statement of work is sometimes then, of 12 course, all reviewed by other members of the team in 13 terms of the deal team. It is reviewed by our general 14 counsel's office, unless they are -- unless the 15 amendments are fairly basic in nature are generally 16 just extending some of the prior work, but it's 17 reviewed by our quality review folks. And then the 18 engagement letter is submitted to the client for -- 19 for what they need to sign on, not necessarily are all 20 aspects of the scope of work defined with any sort of 21 a specific deliverable. So sometimes there are 22 components of a statement of work that are not 23 undertaken and sometimes they are -- and most of the 24 times they are, but, so, I don't know if that answers</p>	<p>Page 23</p> <p>1 of that statement of work, of the different statements 2 of work that would have been completed in its entirety 3 and there would be certain that wouldn't have been 4 kicked off at all, depending on these are long-term 5 engagements and the needs of the client change over a 6 course of time. 7 Q. If you look to the first sentence of the 8 Amendment No. 7, Statement of Work, halfway through it 9 states -- I want to make sure I give you the right 10 dates here before -- well, I have a couple of 11 questions. 12 So, in this case, Amendment No. 7 is dated 13 July 17th, is that correct? 14 A. That's correct. 15 Q. But it's effective as of June 1st? 16 A. That is correct. 17 Q. Which is approximately six weeks prior, 18 correct? 19 A. Yes. 20 Q. What is the reason for that lapse of time? 21 Why is it essentially backdated or effective as of a 22 prior date? 23 A. Because our work that is involved in the 24 statement of work started right around the June 1st</p>
<p>Page 22</p> <p>1 your question or not. 2 Q. That's part of it. And I was interested 3 in that, so that's helpful. 4 But where I'm trying to get to, is there a 5 negotiation process with, for example, in this case 6 the City where you provide the original statement of 7 work and they come back to you and say, we want this 8 or we don't want that? Did that process take place in 9 this engagement? 10 A. I'll tell you at least with respect to 11 this particular statement of work, there was feedback 12 that we received in the context of fees, but not 13 necessarily in the context of the scope of work. 14 Q. And I'm seeking a clarification here. 15 Are you talking about Amendment No. 7 or 16 are you talking about the original statement of work 17 or the original agreement? 18 A. I was talking about Amendment No. 7. 19 Q. Okay. 20 A. But in general, going back, I don't recall 21 of specific discussions or back and forth in terms of 22 the contents of the scope of work. I have not gone 23 through the seven amendments going back for this 24 process, but I'm sure there would be certain aspects</p>	<p>Page 24</p> <p>1 timeframe. And -- but, however, between the process 2 of getting the actual engagement letter signed, it 3 took roughly that six weeks process. But in general, 4 the work that's contained in Amendment No. 7 started 5 by around that June 1st timeframe. 6 Q. What was the cause for the six-week time 7 delay? 8 A. It likely was between us getting the 9 letter together and the City having a view in terms of 10 what the fees associated with this work would be and 11 us coming back with a revised proposal on lower fees. 12 And so I think it was -- it was that timeframe between 13 the back and forth of the discussions that took place 14 to get the engagement letter signed. 15 Q. There is a fee schedule amended -- or 16 attached to this amendment, is that correct? 17 A. Yes. 18 Q. And it's at page -- what is marked page 8 19 of 8 in this document. 20 Are these the fees that you were 21 discussing with the City? 22 A. Yeah, these were -- these were the fees 23 that we were discussing with the City, yes. 24 Q. And then based on the information in this</p>



<p>Page 25</p> <p>1 Amendment No. 7, I understand these are 65 percent 2 Ernst & Young's normal rates, is that correct? 3 A. These are 65 percent of the standard 4 rates, yes. 5 Q. Of the standard rates? 6 A. Of the standard rates with respect to, you 7 know, different people and the different sub service 8 lines working on this engagement. 9 Q. And I know that you are a principal, 10 Mr. Malhotra, so is your rate at the top end of this 11 chart here? 12 A. Yes. 13 Q. Is your rate \$805 an hour? 14 A. I believe the rate that is being charged 15 to the City is going to be \$800 an hour for my time. 16 And, however, it is subject to an additional holdback 17 amount that is clarified in the fee arrangement as 18 proposed here depending on how long this case goes. 19 Q. Is this rate schedule a reduction from the 20 rates that Ernst & Young was charging the City prior 21 to this amendment? 22 A. Can you reask that question, please? 23 Q. Is this rate schedule provided in the 24 Amendment No. 7, is this a reduction in the rates that</p>	<p>Page 27</p> <p>1 been a variety of folks. It included the Chief 2 Operating Officer Chris Brown; it included the 3 Emergency Manager, currently Kevyn Orr, with respect 4 to some of those discussions in general, in fact. So 5 it -- it has been generally the City, but I would say 6 in terms of Amendment No. 7, the -- we also got some 7 feedback from the State with respect to our scope of 8 work in the context of our fees. 9 Q. What feedback did you get from the State 10 on Amendment No. 7? 11 A. It was to lower the fees. 12 Q. And who at the State did you have that 13 contact with? 14 A. Rich Baird. 15 Q. Amendment No. 7 is signed by Kevyn Orr, 16 correct? 17 A. Yes. 18 Q. And this is your signature on the -- on 19 page 7, correct? 20 A. Yes. 21 Q. Who signed the original statement of work, 22 do you recall? 23 A. I do not. It would have either been 24 myself or Dave Williams who is our restructuring team</p>
<p>Page 26</p> <p>1 Ernst & Young was charging the City prior to the 2 Amendment No. 7? 3 A. Through the seven amendments, Ernst & 4 Young has gone through a variety of discounts and rate 5 structures that the City has been provided, in 6 addition to hourly rates, in addition to fixed fee 7 rates. So it's a variety of overall rate structures 8 that have been used to provide the City discounts in 9 the context of the work that EY has done. 10 Q. Who on behalf of Ernst & Young negotiates 11 those rates? 12 A. Negotiates those rates with whom? 13 Q. I assume the City. Is there someone else? 14 A. No. I meant if your question was 15 internally or in terms of what rates are being 16 discussed or externally? 17 If the answer is internally, our rates are 18 standard rates. With the client, it was generally a 19 discussion that I had with respect to what our fees 20 were after discussing them with our team internally. 21 Q. And who at the client have you had those 22 discussions with? 23 A. It has been a variety given the fact that 24 we've been assisting the City for a while. It has</p>	<p>Page 28</p> <p>1 leader. It could have been either one of us, but I 2 don't recall. 3 Q. On behalf of the City, who signed? 4 A. I do not remember. 5 Q. Did there -- when you entered into the 6 original engagement, who was your direct report at the 7 City? 8 A. It was the Chief of Staff Kirk Lewis, and 9 the Chief Operating Officer -- the former Chief 10 Operating Officer Chris Brown. 11 Q. Did there come a time where that direct 12 reporting person changed? 13 A. Kirk Lewis has since moved on and so has 14 Chris Brown. So the answer is yes. 15 Q. When did it change in terms of who you 16 reported to? 17 A. It would have changed when they moved on 18 from the City. 19 Q. And when they moved on from the City, who 20 became the people that you reported directly to? 21 A. Generally it was Chris Andrews, the 22 Program Management Director, and the -- who was the 23 former Program Management Director and the former 24 Chief Financial Officer Jack Martin.</p>



<p>Page 29</p> <p>1 Q. How often would you directly communicate 2 with any of the people you directly reported to, the 3 four individuals you just named? 4 A. It was on a weekly basis in general, 5 sometimes more often, sometimes less. 6 Q. And let me ask: Are you still directly 7 reporting to Chris Andrews and Jack Martin or someone 8 else? 9 A. Chris Andrews and Jack Martin have moved 10 on from the City. So, now it's generally Kevyn Orr 11 along with updates given to Gary Brown who is the 12 Chief Operating Officer and Jim Bonsall, the Chief 13 Financial Officer, and Kevyn Orr, of course, in terms 14 of the team that we are dealing with. 15 Q. And how frequently do you directly 16 communicate with those individuals? 17 A. Generally weekly, sometimes more, 18 sometimes less. It depends on a particular week. 19 Q. If I can direct your attention back to the 20 first paragraph of Amendment No. 7, it states that the 21 original contract is dated October 28th, 2011, but was 22 effective as of May 16th, 2011. 23 What was taking place during that 24 five-month time period with respect to the original</p>	<p>Page 31</p> <p>1 Amendment No. 7 here. 2 Do you recall taking me through that 3 process? 4 A. I think if you go back to the testimony, I 5 just want to make sure that I understand your specific 6 questions in terms of the back and forth. I did 7 mention to you that there was discussions with respect 8 to the fees, but I do not recall a lot of the specific 9 back and forth on specific deliverables in 10 Amendment 7. 11 Q. Okay. I'm not trying to trick you. 12 A. I'm just saying what I recall. 13 Q. And so what I guess is the real question 14 I'm getting to was: In the original statement of 15 work, is there a similar listing as contained on 16 Amendment 7 deliverables or anticipated deliverables 17 that E&Y would provide to the City? 18 A. I believe they should be, yes. 19 Q. And do you recall whether there was a 20 negotiation or process of exchanging the documents for 21 purposes of discussing the deliverables between 22 Ernst & Young and the City, with respect to the 23 original SOW? 24 A. In terms of exchanging documents</p>
<p>Page 30</p> <p>1 statement of work? 2 A. I don't recall specifically. However, our 3 work started right around May 16th of 2011. But 4 between the process of getting an engagement letter in 5 place that was acceptable to the City and in 6 conjunction with the template that Ernst & Young uses 7 with respect to an engagement letter, there was a lot 8 of communication between, I would say, the legal team 9 at the City and EY and the attorneys that we had 10 working on this particular engagement letter to just 11 make sure that both the City and Ernst & Young were 12 comfortable with the construct of the letter given the 13 fact that EY did not have a previous engagement letter 14 in place with the City of Detroit. 15 Q. We discussed -- earlier in your deposition 16 we discussed the process of drafting and exchanging 17 the specific deliverables identified in Amendment 18 No. 7. 19 Do you recall that testimony? 20 A. Can you repeat that question again, 21 please? 22 Q. You and I just previously discussed the 23 back and forth between Ernst & Young and the City with 24 respect to the specific deliverables identified in</p>	<p>Page 32</p> <p>1 between -- discussions within EY or discussions with 2 EY and the City? 3 Q. Discussions between EY and the City. 4 A. I don't remember specifically in terms of 5 we had discussions back and forth around specific 6 deliverables. I think there was a general 7 understanding in terms of the work that EY would do, 8 which would be around construct of the -- the 9 liquidity forecasting and any other cost saving 10 assumptions, trying to quantify those. And I don't -- 11 I don't believe there was a lot of back and forth with 12 respect to scope of work that EY was going to assist 13 with. 14 Q. And, of course, there are six amendments 15 prior to the one that we're looking at now. 16 Does each of those amendments have a 17 similar listing of deliverables? 18 A. They generally -- every amendment would 19 generally have either an extension of a scope of work 20 that's being provided or if anything new is -- 21 potentially needs to get added, it would have, yes. 22 Q. In this case does each of the prior 23 amendments, to the best of your recollection, have a 24 similar listing of deliverables or anticipated</p>



<p style="text-align: right;">Page 33</p> <p>1 deliverables by Ernst & Young?</p> <p>2 A. Just to make sure, when you say "similar</p> <p>3 deliverables," whether those deliverables or the</p> <p>4 statement of work was exactly the content of what's in</p> <p>5 Amendment No. 7, the answer is no. If your question</p> <p>6 is with respect to whether generally some specificity</p> <p>7 around what EY would be doing, the answer is yes.</p> <p>8 Q. Okay. Thank you. That is what I meant.</p> <p>9 What was the reason why Ernst & Young</p> <p>10 provided these six prior amendments?</p> <p>11 A. It's generally to provide the same or</p> <p>12 similar type of work that we started off doing with</p> <p>13 liquidity forecasting, assisting in the quantification</p> <p>14 of certain cost concessions that the City was having</p> <p>15 discussions with -- with its union leadership, looking</p> <p>16 at alternatives in terms of how liquidity could be</p> <p>17 boosted, and that those were generally -- and just</p> <p>18 looking at overall restructuring alternatives</p> <p>19 specifically for the City in terms of how to address</p> <p>20 the dire financial position that the City was faced</p> <p>21 with.</p> <p>22 Q. Let me ask the question a different way.</p> <p>23 How does it come about, and we'll talk</p> <p>24 specifically about this engagement, how does it come</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. If I can direct your attention to page 5</p> <p>2 of the Amendment 7 SOW. And you'll see a section</p> <p>3 entitled Timetable. And it states that you expect</p> <p>4 that this -- and this is the additional summer 2013</p> <p>5 services that are identified in this SOW, is that your</p> <p>6 understanding?</p> <p>7 A. Yes.</p> <p>8 Q. That it will extend until December 31st,</p> <p>9 2014, is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you anticipate an Amendment No. 8 being</p> <p>12 necessary?</p> <p>13 A. That's a hypothetical question. It</p> <p>14 depends on what the City -- where the City is in terms</p> <p>15 of its overall restructuring and, you know, how EY can</p> <p>16 continue to add value and assist the City.</p> <p>17 Q. Turning to page 6 -- I'm sorry. I'm</p> <p>18 sorry. Page 4 is what I wanted to send you to.</p> <p>19 The last sentence on the bottom of page 4</p> <p>20 states, "For the avoidance of doubt, the Services do</p> <p>21 not" -- and Services with a capital S -- "do not</p> <p>22 include EY serving as an expert witness in connection</p> <p>23 with your Chapter 9 proceedings or otherwise."</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 34</p> <p>1 about that Ernst & Young, or if it's the City, tell me</p> <p>2 that, how does it come about that a decision is made</p> <p>3 that an amendment needs to be made to the original</p> <p>4 SOW?</p> <p>5 A. It was generally when the timeframe</p> <p>6 associated with an amendment was expiring or the fees</p> <p>7 associated with an amendment were not -- were not</p> <p>8 being able to cover the scope of work and if there</p> <p>9 were any additions that were being made to the scope</p> <p>10 of work. I would say those were the three -- or would</p> <p>11 have been, in my recollection, one of the three</p> <p>12 reasons why a statement of work would be extended</p> <p>13 through an amendment.</p> <p>14 Q. With your experience on this engagement,</p> <p>15 is it -- has it been Ernst & Young stating an</p> <p>16 amendment is necessary or is it -- has it been the</p> <p>17 City?</p> <p>18 A. My general recollection is that it's EY</p> <p>19 that has been -- that has said that either, you know,</p> <p>20 the timeframe on the engagement letter has expired,</p> <p>21 and which has generally been, I would say, the -- the</p> <p>22 norm, or the aspect with respect to the fees need to</p> <p>23 change in the context of the scope of work. But I</p> <p>24 would say it is generally EY.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yes.</p> <p>2 Q. And that is referring to -- the Services</p> <p>3 in that sentence are referring to the services</p> <p>4 identified above it and in this Amendment No. 7,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Are you currently providing work to --</p> <p>8 scratch that. Let me strike that.</p> <p>9 Is your deposition here today considered</p> <p>10 part of the services included in Amendment No. 7?</p> <p>11 A. I'm here, so my -- my assumption unless,</p> <p>12 you know, Wayne Flick from Latham tells me otherwise,</p> <p>13 that would be my general understanding, it would be in</p> <p>14 connection with the work that we are doing on the</p> <p>15 statement -- the Amendment No. 7.</p> <p>16 Q. Are there any services being provided by</p> <p>17 Ernst & Young to the City right now that you are aware</p> <p>18 of that fall outside of the services identified in</p> <p>19 Amendment No. 7?</p> <p>20 A. I do not know of any other specific</p> <p>21 increment -- additional statements of work that have</p> <p>22 been executed. There are other opportunities that EY</p> <p>23 is providing some services to the City. However, it's</p> <p>24 not -- that work is just in an evaluative mode versus</p>

<p style="text-align: right;">Page 37</p> <p>1 I believe I do not know of a specific letter or an 2 amendment that has been signed yet. 3 Q. I want to understand your answer a little 4 better. 5 This additional work that you state is in 6 an evaluative mode, is that work that E&Y is providing 7 in connection to the bankruptcy? 8 A. Well, I can tell you what the work is. It 9 is not necessarily in connection with the bankruptcy. 10 The work is to look at the revenues that are 11 attributable to the City from the Detroit-Windsor 12 Tunnel and our team I believe is starting to look at 13 that. I do not know if we have a specific signed 14 letter yet, but our team is starting to look at that 15 just to make sure the City is -- whether the City is 16 getting its proportionate share of the revenues that 17 come from the Detroit-Windsor Tunnel. That's the one 18 that sort of, you know, is top of mind. 19 From an evaluative perspective, the City 20 is -- and EY is looking at other ways that they can 21 continue to assist the City. 22 Q. And would you consider that work that E&Y 23 is undertaking with respect to the Detroit-Windsor 24 Tunnel, would you consider that work to be something,</p>	<p style="text-align: right;">Page 39</p> <p>1 MR. STEWART: Objection; asking for a legal 2 conclusion. 3 BY MS. BRUNO: 4 Q. You can answer. 5 A. No. 6 Q. Are you aware of any individual at Ernst & 7 Young who would be serving as an expert to the City? 8 MR. STEWART: Objection; same objection. 9 Do you mean an expert as defined by the 10 Federal Rules? 11 MS. BRUNO: I mean an expert as defined in 12 Amendment No. 7. 13 MR. STEWART: So why don't you ask him what that 14 means in Amendment No. 7. 15 BY THE WITNESS: 16 A. Could you ask your question again, please? 17 BY MS. BRUNO: 18 Q. Sure. That question is actually better. 19 What does Ernst & Young mean when they 20 state, "For avoidance of doubt, the Services do not 21 include Ernst & Young serving as an expert in 22 connection with the Chapter 9 proceedings"? 23 A. I think the -- what it says is that EY is 24 basically providing its services in connection with</p>
<p style="text-align: right;">Page 38</p> <p>1 a separate line of work than what you are doing on 2 behalf of the City with respect to Amendment No. 7? 3 A. I think it would generally be in line with 4 the work that we would be doing. However, what we 5 always want to provide clarity and specificity around 6 the work stream. So it would generally be in line 7 with the services in Amendment No. 7. However, we 8 would always clarify and specify that these would be 9 the specific items we would be undertaking because 10 they are not necessarily clearly articulated in the 11 scope of work. 12 Q. Approximately how much money has the City 13 paid Ernst & Young to this date in connection with 14 this engagement? 15 MR. STEWART: Are you referring to the entire 16 engagement or No. 7? 17 BY MS. BRUNO: 18 Q. The entire engagement. 19 A. I do not know the exact number right now, 20 but it is somewhere in the neighborhood of 6-1/2 to \$7 21 million. 22 Q. Returning back to that last sentence on 23 page 4 of 8, do you consider what you are doing today 24 as providing expert testimony?</p>	<p style="text-align: right;">Page 40</p> <p>1 the facts that EY has and our professionals have and 2 our team has in terms of providing services for 3 Chapter 9. And so it's -- we are sort of assisting 4 this overall situation in the context of the overall 5 facts as have been provided to us and that information 6 that has been provided to us, which is what we have 7 used to prepare the analysis. 8 MS. BRUNO: I'm about to go to a new area. Do 9 you want to take a quick break? 10 MR. STEWART: Let's keep going unless others 11 need a break. 12 MS. BRUNO: All right. Is that all right with 13 you, Mr. Malhotra? 14 THE WITNESS: Sure. 15 BY MS. BRUNO: 16 Q. Okay. Why don't we turn back to your 17 declaration, which is Exhibit 1. 18 And I'll direct your attention to what is 19 provided at Paragraph 10 of the declaration, which is 20 on page 4. And this paragraph discusses the cash flow 21 forecasts. 22 Who developed the actual forecast at 23 Ernst & Young? 24 A. It was a team of EY professionals in</p>



<p style="text-align: right;">Page 41</p> <p>1 collaboration with the team at the City and other 2 advisers that the City has retained in the preparation 3 of these cash flow forecasts. 4 Q. Were you personally involved in that work? 5 A. Yes. 6 Q. And who was personally -- who are the 7 individuals that you worked with at the City on that 8 work? 9 A. The City or EY? 10 Q. At the City. 11 A. At the City, it would have been the former 12 Chief Financial Officer Jack Martin, it would have 13 been the former Program Management Director Chris 14 Andrews, it would have been one of the controllers, I 15 think Rick Drumb, it would have been other members 16 from specific departments that the EY team 17 collaborated with in order to prepare those cash flow 18 forecasts and also used assumptions from what was the 19 information being provided by the other advisers the 20 City had hired. 21 Q. What are the underlying demographic 22 assumptions for the City in the revenue forecasting? 23 MR. STEWART: Objection. 24 BY THE WITNESS:</p>	<p style="text-align: right;">Page 43</p> <p>1 continue to go at the current rate or not. So I think 2 you have to look at these assumptions over a longer 3 timeframe and I think you have to look at it from the 4 standpoint of what's applicable here in the next -- in 5 the short term versus what's applicable in the long 6 term. 7 Q. Did Ernst & Young develop any scenarios 8 with a more optimistic demographic assumption? 9 A. In terms of having? 10 Q. Population increasing. 11 A. I do not recall of the team having a 12 scenario in which in the short term population is 13 increasing. And I would think that if you look at it 14 over a longer timeframe, you know, maybe there are 15 assumptions where the population decline slows, but I 16 don't recall of a scenario where in the short term 17 population is increasing. 18 Q. In the context of your answer here, what 19 do you mean by short term? 20 A. In the next three or four or five years. 21 Q. Did you do any kind of ten-year 22 forecasting that assumed that the population decline 23 would either slow down or even there could be actual 24 growth in population?</p>
<p style="text-align: right;">Page 42</p> <p>1 A. You have to repeat that question or 2 rephrase it in terms of the demographic assumptions. 3 BY MS. BRUNO: 4 Q. In terms of the population of the City. 5 A. The general assumptions are that there is 6 a slight population decline in the context of the 7 revenue assumptions, but I think you have to look at 8 the demographics in a greater amount of detail which 9 has been provided on the City's data site with respect 10 to the assumptions around growth of revenues from 11 residents versus non-residents in terms of the makeup 12 of the order of revenue profile. 13 Q. I guess I'll ask for a clarification. 14 What is the assumption going forward on 15 behalf -- what is the assumption that Ernst & Young 16 has used going forward in these forecasts with respect 17 to population? 18 A. I think it's -- it's a general decline. 19 Q. And what is that assumption based on? 20 A. Based on all of the trends that are very 21 evident over the last few years and looking at that 22 trend and at least adjusting as to what that decline 23 would be here in the near future and then, you know, 24 over the course of the ten years does that decline</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I think that generally is what's 2 reflective in the forecasts with respect to that there 3 is a -- a reduction in the pace of the decline over 4 the -- in the outer years. I think that is currently 5 reflective in the forecast. 6 Q. But there are no scenarios that would 7 include an actual rise in the population, is that 8 correct? 9 A. I don't recall. 10 Q. You would agree that if the population 11 does grow, it would affect the results of any 12 forecasts, correct? 13 A. If you change the assumptions, the numbers 14 will change, yes. 15 Q. And, in fact, it could dramatically affect 16 it, correct? 17 MR. STEWART: Objection. 18 BY THE WITNESS: 19 A. I don't know about that. 20 BY MS. BRUNO: 21 Q. Returning to your declaration in 22 Paragraph 10, it states that, "The work conducted by 23 Ernst & Young developing the cash flow forecasts as 24 well as the ten-year projection" -- "projections,"</p>

<p style="text-align: right;">Page 45</p> <p>1 excuse me, "were limited to the City's general fund,"</p> <p>2 is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. In other words, the projections assume</p> <p>5 that there are no other funds available to the City</p> <p>6 beyond the general fund, is that correct?</p> <p>7 A. It -- it assumes that the general fund</p> <p>8 will not have additional funds from other funds, yeah,</p> <p>9 that's generally correct.</p> <p>10 Q. What about the City having available --</p> <p>11 other available funds outside of the general fund?</p> <p>12 A. The City has multiple funds outside the</p> <p>13 general fund. The main one is the water and sewer,</p> <p>14 which we did not perform a ten-year projection on the</p> <p>15 water and sewer funds. My understanding is that those</p> <p>16 funds are not necessarily available to the general</p> <p>17 fund.</p> <p>18 Q. To the general fund that may be correct,</p> <p>19 but it would be available to the City, would it not?</p> <p>20 MR. STEWART: Objection.</p> <p>21 BY THE WITNESS:</p> <p>22 A. It would be available to the City for the</p> <p>23 purposes those funds were raised for, which is</p> <p>24 generally maintenance and capital improvements on the</p>	<p style="text-align: right;">Page 47</p> <p>1 declaration here are solely limited with the caveat</p> <p>2 that you provided to the general fund, is that</p> <p>3 correct?</p> <p>4 MR. STEWART: Objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. The cash flow forecasts and the ten-year</p> <p>7 projections with respect to the receipts and</p> <p>8 disbursements and the revenues and expenses are</p> <p>9 generally reflective of the general fund and the</p> <p>10 Department of Transportation. That's the way I would</p> <p>11 characterize it.</p> <p>12 BY MS. BRUNO:</p> <p>13 Q. You would agree that the City does have</p> <p>14 access to other funds, correct?</p> <p>15 MR. STEWART: Objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't understand when you say the City</p> <p>18 has access to.</p> <p>19 BY MS. BRUNO:</p> <p>20 Q. There is other enterprise funds available</p> <p>21 to the City, correct?</p> <p>22 MR. STEWART: Objection.</p> <p>23 BY THE WITNESS:</p> <p>24 A. Available to the City for what?</p>
<p style="text-align: right;">Page 46</p> <p>1 water and sewer side.</p> <p>2 BY MS. BRUNO:</p> <p>3 Q. Let's backtrack a little bit. I think</p> <p>4 we've gone in a different direction than I'm trying to</p> <p>5 focus on.</p> <p>6 My question to you is: The forecasts that</p> <p>7 you provided in this declaration are limited solely to</p> <p>8 the general fund, is that correct?</p> <p>9 A. They are generally limited to the general</p> <p>10 fund, other than if they were other enterprise funds</p> <p>11 the City was subsidizing, like the Department of</p> <p>12 Transportation, those would have been included in the</p> <p>13 general fund as it is a -- a fund that the City</p> <p>14 subsidizes and has historically subsidized.</p> <p>15 Q. So you would agree, though, that subject</p> <p>16 to your exception there that the assumptions and</p> <p>17 forecasts provided in this declaration do not take</p> <p>18 into account other funds available to the City?</p> <p>19 MR. STEWART: Objection.</p> <p>20 BY THE WITNESS:</p> <p>21 A. You have to rephrase your question.</p> <p>22 BY MS. BRUNO:</p> <p>23 Q. The forecasts and cash flows, the</p> <p>24 projections, the information that is discussed in your</p>	<p style="text-align: right;">Page 48</p> <p>1 BY MS. BRUNO:</p> <p>2 Q. Well, if you are talking about the cash</p> <p>3 available to the City, certainly there is other</p> <p>4 sources of cash available to the City outside of the</p> <p>5 general fund, you would agree with that?</p> <p>6 MR. STEWART: Objection.</p> <p>7 BY THE WITNESS:</p> <p>8 A. No. It depends on what purpose you are</p> <p>9 asking the question, the context of.</p> <p>10 BY MS. BRUNO:</p> <p>11 Q. You would agree with me that the general</p> <p>12 fund is not the only source of available cash to the</p> <p>13 city, would you not?</p> <p>14 MR. STEWART: Objection.</p> <p>15 BY THE WITNESS:</p> <p>16 A. The general fund -- the cash that is</p> <p>17 available to the general fund is generally the only</p> <p>18 cash that is available to the City for its core</p> <p>19 operations that are not related to any other</p> <p>20 enterprise funds. So, my answer would be, that the</p> <p>21 cash flows that are reflective in here and are</p> <p>22 generally available for the general fund is the City's</p> <p>23 operating cash in general.</p> <p>24 BY MS. BRUNO:</p>

<p>Page 49</p> <p>1 Q. How do you have that understanding?</p> <p>2 A. That is my general understanding. So,</p> <p>3 my -- my understanding is that the monies that are</p> <p>4 available or are attributable to the bank accounts of</p> <p>5 the enterprise funds have specific reasons for what</p> <p>6 that cash can be spent. So we have made the</p> <p>7 assumption that that cash is not available for the</p> <p>8 general fund. But I would think that would be a</p> <p>9 further legal determination. It is our understanding</p> <p>10 that that cash is not available to fund the operations</p> <p>11 of the general fund.</p> <p>12 Q. And how did you obtain that understanding?</p> <p>13 That's what I'm trying to get to.</p> <p>14 A. I don't recall. That's our general</p> <p>15 understanding that there are revenue bonds that have</p> <p>16 been issued at the Water and Sewer Department, and</p> <p>17 those revenue bonds are associated with specific</p> <p>18 maintenance and capital improvements for the Water and</p> <p>19 Sewer Department, and that those funds are generally</p> <p>20 not available to fund the operations of the general</p> <p>21 fund.</p> <p>22 Q. Do you recall having a conversation with</p> <p>23 anyone at the City to that effect?</p> <p>24 A. Yes. I'm -- I think all of the</p>	<p>Page 51</p> <p>1 estimates for the General Fund."</p> <p>2 A. Okay.</p> <p>3 Q. That's one example that I can see.</p> <p>4 Are there similar -- my question is -- I'm</p> <p>5 trying to get to the original SOW. I'm using the</p> <p>6 Amendment 7 to discuss the original SOW.</p> <p>7 Did the original SOW limit the work to the</p> <p>8 general fund in the same way that Amendment No. 7</p> <p>9 does?</p> <p>10 A. I don't recall specifically. But I can</p> <p>11 say that earlier on in our engagement, I would say in</p> <p>12 the 2011 timeframe, we were looking at the cash flows</p> <p>13 of the water and sewer fund and the other enterprise</p> <p>14 funds as well. But that process stopped, I would say,</p> <p>15 in the first four or five or six months of the</p> <p>16 engagement because there was sort of water and sewer</p> <p>17 funds were tracking their cash on their own, and so</p> <p>18 were some of the other enterprise funds, that our</p> <p>19 focus really was on the general fund.</p> <p>20 But just for clarity, the work that would</p> <p>21 have been done in the front end was to look at the</p> <p>22 funds that water and sewer had and the receipts and</p> <p>23 disbursements associated with that versus any</p> <p>24 transfers that were coming back to the general fund.</p>
<p>Page 50</p> <p>1 discussions from the very front end of our engagement</p> <p>2 would have been in the context that, you know, whether</p> <p>3 any other cash is available, so the answer would be</p> <p>4 yes.</p> <p>5 Q. Who at the City do you recall having that</p> <p>6 conversation with?</p> <p>7 A. I don't recall of a specific conversation,</p> <p>8 but I'm sure that the discussions would have been with</p> <p>9 Chris Brown and with Kirk Lewis and any of the other</p> <p>10 folks that we have reported to during the City, but I</p> <p>11 do not recall of a specific conversation in terms of</p> <p>12 the funds available to the Water and Sewer Department.</p> <p>13 Q. If I turn your attention to Exhibit 8,</p> <p>14 which is the Amendment 7 to the SOW, on page 2 there</p> <p>15 are a number of specific references to work and</p> <p>16 analysis of the City's general fund. And it's in many</p> <p>17 places defined General Fund with a capital G and a</p> <p>18 capital F.</p> <p>19 Do you see what I'm referring to?</p> <p>20 A. Yes. I'm trying to find the capital G and</p> <p>21 the capital F, but I generally -- I'm on page 2, that</p> <p>22 the context is for the general fund.</p> <p>23 Q. Sure. Just if you look at the second bold</p> <p>24 bullet point, "Preparation of 10-Year tax revenue</p>	<p>Page 52</p> <p>1 So they were looking at those forecasts in isolation.</p> <p>2 But that work sort of stopped I think right around in</p> <p>3 the first four or five months of the engagement.</p> <p>4 Q. And why did that work stop?</p> <p>5 A. It was because the focus continued to be</p> <p>6 on the general fund and these were self-sustaining</p> <p>7 funds with respect to at least the Water and Sewer</p> <p>8 Department. And so they were monitoring their -- and</p> <p>9 dealing with their cash activity, although connected</p> <p>10 to the City, but we weren't helping forecast receipts</p> <p>11 and disbursements because they were not impacting the</p> <p>12 general fund.</p> <p>13 Q. You previously testified in your prior</p> <p>14 deposition that Ernst & Young was not asked to look at</p> <p>15 possible disposition of City assets, is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Why -- did you have a discussion with the</p> <p>18 City regarding whether that would be valuable work for</p> <p>19 Ernst & Young to provide?</p> <p>20 MR. STEWART: Objection.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I -- I'm not sure I follow the question.</p> <p>23 BY MS. BRUNO:</p> <p>24 Q. How did it come about that Ernst & Young</p>



<p>Page 53</p> <p>1 didn't evaluate the value of disposition of some of 2 the City assets? 3 A. It was not a part of our scope of work. 4 Q. You would agree that there could be cash 5 value to the disposition of some of those assets, 6 would you not? 7 MR. STEWART: Objection. 8 BY THE WITNESS: 9 A. I think that's a better question to ask 10 for the City's investment banker. 11 BY MS. BRUNO: 12 Q. Well, I'm not talking about the specific 13 numbers here, but you know what some of the assets 14 available to the City are, correct? 15 A. In general, yes. 16 Q. And you understand that some of those 17 assets could be valuable or quite valuable, correct? 18 MR. STEWART: Objection. 19 BY THE WITNESS: 20 A. It depends on what assets you are talking 21 about. 22 BY MS. BRUNO: 23 Q. Why don't we look at Exhibit No. 4 -- oh, 24 I'm sorry. I'll hand it to you. Exhibit No. 4 from</p>	<p>Page 55</p> <p>1 City from asset sales. And that's where I -- because 2 that's what's very clearly laid out in the proposal. 3 If there are proceeds available that are 4 available to the City, those numbers would change. 5 But I can at least highlight and articulate what the 6 assumptions are with respect to the ten-year forecast 7 that the City has put out. 8 BY MS. BRUNO: 9 Q. And so your assumptions include that none 10 of these assets will be disposed of in any way, is 11 that correct? 12 A. That's generally correct. 13 Q. Sticking with Exhibit No. 4 before you, if 14 you'd turn to page 80 of the document. I'm sorry. I 15 should say 87 of the computer generated numbers. 16 And this is a portion of the presentation 17 that discusses increasing the tax collection. You 18 look like you are on a different page than I am here. 19 A. 87. 20 Q. You've got it? 21 A. Yes. 22 Q. You would agree that increasing the tax 23 collection rates and improving the collection of past 24 due taxes could materially improve the City's</p>
<p>Page 54</p> <p>1 your prior deposition, I'll hand it to you. It was 2 the Proposal For Creditors -- 3 A. Okay. 4 Q. -- dated June 14. 5 And I believe the assets are identified on 6 90. And it is 90 of the computer generated numbers on 7 the bottom. 8 And on pages 90 through 96, the 9 presentation discussed various assets that the City 10 could derive some cash benefit from, correct? 11 MR. STEWART: Objection. 12 BY THE WITNESS: 13 A. Yes. 14 BY MS. BRUNO: 15 Q. And, well, I don't want to quarrel or even 16 discuss with you what the actual specific value of any 17 one of those assets are, but you would agree that the 18 implementation of any of these proposals would improve 19 the City's cash position, would it not? 20 MR. STEWART: Objection. 21 BY THE WITNESS: 22 A. Here is what I would say. The current 23 ten-year projections right now do not include any 24 incremental proceeds that could be available to the</p>	<p>Page 56</p> <p>1 financial position, could it not? 2 MR. STEWART: Objection. 3 BY THE WITNESS: 4 A. Yeah, I can't answer that because I do not 5 know the magnitude of what you are referring to in 6 terms of your question and what the definition of 7 material is. 8 BY MS. BRUNO: 9 Q. Well, the presentation here, the June 14th 10 presentation discussed at the fourth bullet down 11 identifies approximately \$250 million of unpaid or 12 outstanding tax debts. If those debts would be -- 13 could be addressed and collected, that would be a 14 material improvement in the cash position, would it 15 not? 16 MR. STEWART: Objection. 17 BY THE WITNESS: 18 A. This amount that has been identified by a 19 third party, Compuware, for \$250 million, I do not 20 know what portion of it has been included specifically 21 in the work with respect to collection efforts that 22 Conway MacKenzie has done, but my assumption is it 23 wouldn't have been to the magnitude of \$250 million. 24 So, if \$250 million were collected, it</p>



<p style="text-align: right;">Page 57</p> <p>1 would improve the overall profile is my assumption.</p> <p>2 BY MS. BRUNO:</p> <p>3 Q. I have heard estimates that a more</p> <p>4 accurate estimate of outstanding tax debt is</p> <p>5 significantly higher than \$250 million.</p> <p>6 Are you familiar with these higher</p> <p>7 estimates that are being discussed?</p> <p>8 MR. STEWART: Objection.</p> <p>9 BY MS. BRUNO:</p> <p>10 Q. Have been discussed?</p> <p>11 MR. STEWART: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. No.</p> <p>14 BY MS. BRUNO:</p> <p>15 Q. You have not heard that the outstanding</p> <p>16 tax debt available to the City could be as much as</p> <p>17 \$700 million?</p> <p>18 A. I have not heard that, that I recall.</p> <p>19 Q. To be clear, your forecasts don't account</p> <p>20 for the collection, any type of truly significant to</p> <p>21 this degree of outstanding debt, is that correct?</p> <p>22 MR. STEWART: Objection.</p> <p>23 BY THE WITNESS:</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 59</p> <p>1 forecasts and analysis was based upon the</p> <p>2 comprehensive annual finance report of the City, the</p> <p>3 C-A-F-R, CAFR.</p> <p>4 Do you see where you discuss that in this</p> <p>5 paragraph?</p> <p>6 MR. STEWART: Objection.</p> <p>7 BY THE WITNESS:</p> <p>8 A. It was one of the documents that -- that</p> <p>9 we used in terms of helping pull together the</p> <p>10 forecast.</p> <p>11 BY MS. BRUNO:</p> <p>12 Q. Was -- it was the primary document,</p> <p>13 correct, primary document, wasn't it?</p> <p>14 MR. STEWART: Objection.</p> <p>15 BY THE WITNESS:</p> <p>16 A. No.</p> <p>17 BY MS. BRUNO:</p> <p>18 Q. What would you consider to be the primary</p> <p>19 document then?</p> <p>20 A. There was not one single primary document.</p> <p>21 It was a compilation of all of the different sources</p> <p>22 of data that we got that included the CAFR, that</p> <p>23 included the raw files that we got from the City, that</p> <p>24 included some of the information we saw in terms of</p>
<p style="text-align: right;">Page 58</p> <p>1 MS. BRUNO: Why don't we take a quick break. I</p> <p>2 don't -- I only need about ten minutes for a break.</p> <p>3 (WHEREUPON, a recess was had</p> <p>4 from 10:57 to 11:08 a.m.)</p> <p>5 BY MS. BRUNO:</p> <p>6 Q. Mr. Malhotra, when we were talking about</p> <p>7 funds available to the enterprise, I believe you</p> <p>8 discussed the water and sewer funds.</p> <p>9 Are you aware of other funds available to</p> <p>10 the enterprise?</p> <p>11 A. Other funds that are available to</p> <p>12 enterprise funds?</p> <p>13 Q. Enterprise funds available to the City.</p> <p>14 I'm sorry.</p> <p>15 MR. STEWART: Objection, by the way, to the</p> <p>16 phrase "available to the city."</p> <p>17 BY THE WITNESS:</p> <p>18 A. I do not believe that there are, that I</p> <p>19 know of, other enterprise funds' funds that are</p> <p>20 available to the City.</p> <p>21 BY MS. BRUNO:</p> <p>22 Q. Returning to your declaration, I'll direct</p> <p>23 your attention to Paragraph 14.</p> <p>24 In that paragraph you discuss that E&Y's</p>	<p style="text-align: right;">Page 60</p> <p>1 bank activity, in terms of looking at, you know, a lot</p> <p>2 of the information together, but I can't recall that</p> <p>3 there was one primary document that we relied upon.</p> <p>4 Q. The 2012 CAFR is relied upon and</p> <p>5 identified over 30 times in your declaration.</p> <p>6 Does that seem like a reasonable estimate</p> <p>7 to you in terms of how many times it's cited in your</p> <p>8 declaration?</p> <p>9 MR. STEWART: Objection.</p> <p>10 BY THE WITNESS:</p> <p>11 A. It's cited in the context of the</p> <p>12 outstanding debt balances that the City has, and so I</p> <p>13 think it's a reasonable assumption with respect to the</p> <p>14 outstanding indebtedness of the City, which is where</p> <p>15 the CAFR has been referenced as a document.</p> <p>16 BY MS. BRUNO:</p> <p>17 Q. And thus you would agree then that Ernst &</p> <p>18 Young relied upon this information in creating its</p> <p>19 assumptions and forecasts, correct?</p> <p>20 A. It was one of the documents that we refer</p> <p>21 to, yes.</p> <p>22 Q. But you did not audit that information,</p> <p>23 did you?</p> <p>24 A. That is correct.</p>



<p>Page 61</p> <p>1 Q. And what kind of stress testing or 2 analysis did you undertake with respect to that 3 information to ensure that it was accurate? 4 MR. STEWART: By that information, you mean CAFR 5 or something else? 6 MS. BRUNO: I mean CAFR. Thank you. 7 BY THE WITNESS: 8 A. The CAFR is the City's audited financial 9 statement. We did not run separate stress tests on 10 the -- or the information that was applicable from the 11 CAFR, but like I said, it was one of the documents 12 that we used in terms of coming up and assisting the 13 City come up with the forecast. 14 BY MS. BRUNO: 15 Q. You are aware, though, that it is well 16 documented that the City's financial recordkeeping was 17 both inadequate and contained numerous deficiencies, 18 correct? 19 MR. STEWART: Objection. 20 BY THE WITNESS: 21 A. The information that we were generally 22 looking at was for the context of cash in which the 23 CAFR was not a primary source. With respect to 24 looking at the debt balances that the City had, we did</p>	<p>Page 63</p> <p>1 indebtedness of the City. We did not go back and do 2 original debt documents to try and ascertain whether 3 the documentation of the CAFR was accurate or not. 4 Q. I'm going to hand you what was previously 5 marked as Exhibit 3 at your deposition. Hold on. 6 I'll give you a moment to look at this, 7 Mr. Malhotra, but this is the February 19th memorandum 8 generated by the Detroit Financial Review Team. 9 Have you seen this document before, 10 Mr. Malhotra? 11 A. Yes, I have. 12 Q. And if I can direct your attention to -- 13 the number is going to be hard to follow, but it's 14 marked 2 at the bottom of the page, but it's -- it is 15 an attachment to the actual memoranda. So the top of 16 the page says "Finding 2012-02." Let me know when -- 17 A. I'm there. 18 Q. You are there, okay. 19 And the "Finding 2012-02" relates to 20 reconciliations, transaction processing, account 21 analysis and document retention. Is that what you 22 read there? 23 A. Yes. 24 Q. I'm going to read from the last sentence</p>
<p>Page 62</p> <p>1 look at the CAFR. I am not aware of specific 2 deficiencies in the context of the debt balances the 3 City was reporting in the CAFR, but I have not audited 4 any of that data. 5 BY MS. BRUNO: 6 Q. You are aware that the Financial Review 7 Team that undertook work for the City found many 8 deficiencies with the recordkeeping of the financials 9 of the City, are you not? 10 MR. STEWART: Objection. 11 BY THE WITNESS: 12 A. I don't recall specifically, but generally 13 the -- the quality of information from the systems 14 that have been available, you know, has -- has to be, 15 you know, reviewed in order to make sure that we are 16 using reasonable assumptions. 17 BY MS. BRUNO: 18 Q. And what review was undertaken by Ernst & 19 Young to ensure that this was reliable information to 20 generate assumptions from? 21 A. When you say "this," is it -- 22 Q. CAFR, in this instance. 23 A. From the CAFR, it's the -- the information 24 that has been reported with respect to the outstanding</p>	<p>Page 64</p> <p>1 of the first paragraph, and the findings of the 2 Detroit Financial Review Team were that, "During the 3 audit, we noted deficiencies in the areas of 4 transaction processing, account analysis, data 5 integrity, reconciliation performance, and document 6 retention." 7 Do you see where it says that? 8 A. Yes. 9 Q. Did you understand that that was the state 10 of the financial recordkeeping of the City when you 11 undertook your work for the City? 12 MR. STEWART: Objection. 13 BY THE WITNESS: 14 A. I can't recall. 15 BY MS. BRUNO: 16 Q. Another finding, and I'm going to the next 17 immediate paragraph, is: "The City's process to 18 identify accrued expenses is not adequate. Our audit 19 procedures identified expenditures related to fiscal 20 year 2012 that were not appropriately recorded as 21 expenditures in fiscal year 2012." 22 Do you see that? 23 A. I see it, yes. 24 Q. Would you agree with me that there are</p>



<p style="text-align: right;">Page 65</p> <p>1 noted issues and problems with the recordkeeping of 2 the City? 3 MR. STEWART: Objection; the document speaks for 4 itself. There is no evidence he wrote it. 5 BY THE WITNESS: 6 A. That's what the statement says. So, I'm 7 not sure I fully understand what your question is. 8 BY MS. BRUNO: 9 Q. Did Ernst & Young do anything to ensure 10 that the information that they evaluated and relied 11 upon was accurate information to draw assumptions 12 from? 13 A. Who is "they"? 14 Q. Ernst & Young. The question -- let me 15 rephrase the question. That might help. 16 Did Ernst & Young do anything to ensure 17 that the information that Ernst & Young evaluated and 18 relied upon as received from the City was accurate 19 information that you could draw assumptions from? 20 A. EY did -- our team based on the data that 21 was received did go through the information to make 22 sure that the assumptions we were using were 23 reasonable. 24 Q. And what would be the process that Ernst &</p>	<p style="text-align: right;">Page 67</p> <p>1 information and assumptions back and forth. 2 Q. Just to be clear, are you aware of any 3 instance or any specific circumstance of -- at all 4 where Ernst & Young went back to the City and said, I 5 think there is a problem with the information you 6 provided? 7 A. I am sure there were several conversations 8 in which we were challenging and asking questions with 9 respect to the data that we were receiving, but I 10 don't recall of any one specific instance off the top 11 of my head that stands out versus not. 12 Q. Can you give me one example of any 13 instance where Ernst & Young challenged the 14 information received and went back to any department 15 in the City where the information came from to verify 16 or better understand a problem with the information 17 received? 18 MR. STEWART: Objection to form. 19 BY THE WITNESS: 20 A. There were instances when we were 21 receiving reports on cash collections that were not 22 appropriately categorized and which -- and which we 23 went back and, you know, further evaluated as to, you 24 know, what the -- where those cash receipts really</p>
<p style="text-align: right;">Page 66</p> <p>1 Young would go through to make sure that information 2 used was reasonable? 3 A. Well, it would generally have been that if 4 we were receiving some information, we would try and 5 review what other documentation may or may not be 6 available to support any trends from a historical 7 perspective and whether the information was 8 consistent, and if it was not consistent, if there 9 were any major outliers, speak to the team at the City 10 to try and understand what changes may be happening. 11 So, I'm comfortable that what we undertook 12 as an analysis of the information that was presented 13 by the City after asking questions that we were using 14 reasonable assumptions. 15 Q. This process that you just outlined, can 16 you recall any specific instances where Ernst & Young 17 determined that the financial information received 18 from the City contained either an outlier or an error? 19 A. This was generally a collaborative 20 process. So, there was exchange of information 21 between the City and the EY team on a regular basis. 22 And so I can't recall something off the top of my 23 head, but my point is that this was generally an 24 iterative and a collaborative process of exchanging</p>	<p style="text-align: right;">Page 68</p> <p>1 actually belonged in terms of income taxes or property 2 taxes. They were -- that's one example. 3 There were questions with respect to the 4 amount of accounts payable outstanding that the City 5 was reporting and, you know, if there were more 6 invoices than that were actually entered into the 7 system or not. So, there have been a variety of 8 back-and-forth conversations on different topics which 9 is part of what we actually are helping at the City 10 with is to try and get our arms around reasonable 11 assumptions around the data that is available. 12 BY MS. BRUNO: 13 Q. Why don't we turn back to Exhibit 4, which 14 is the June 14 proposal. And I'll direct your 15 attention to what is page 68 of 135 in the electronic 16 numbering. And this relates -- the questions that I'm 17 going to ask you relate to the restructuring and 18 reinvesting initiatives. 19 Why is the City spending \$1.25 billion on 20 these initiatives? 21 A. I think it's in general to improve the 22 quality of safety as well as blight removal in the 23 City. The specifics of that as to how that number was 24 brought about is something that should be discussed</p>



<p>Page 69</p> <p>1 with the Conway MacKenzie team as they were looking at 2 the reinvestment portion to the City. 3 Q. Did Ernst & Young have any role in 4 determining the amount the City would spend on these 5 reinvestment initiatives? 6 A. In aggregate, no. 7 Q. How about in specific to any one 8 initiative? 9 A. Not -- not in the context of the \$1.25 10 billion. 11 Just for clarity, there were assumptions 12 that were involved in the base case with respect to 13 what initiatives or certain initiatives the City had 14 already started. And so that part was clarified with 15 respect to what assumptions were already included in 16 the base case versus not, that would have been 17 included in the reinvestment costs into the City. 18 Q. I guess I'm not sure that we communicated 19 on that. 20 Did E&Y have any role in determining the 21 amount of money that would go into any particular 22 investment -- initiative or investment -- 23 reinvestment? Excuse me. 24 MR. STEWART: Objection.</p>	<p>Page 71</p> <p>1 the services that are provided as -- and 2 correspondingly the revenues that are associated with 3 increased fees or fines or some collection rates that 4 may be attributable to specific investments. There is 5 another source of potential upside, which EY was 6 involved in, with respect to making certain 7 assumptions on if there is a cleaner and safer City, 8 should the overall recovery in terms of the tax 9 collections the City will have are potentially better 10 than in a scenario where there is no investment in 11 either public safety or blight removal. 12 Q. And what was Ernst & Young's involvement 13 in that second assumption? 14 A. Like I said, EY helped formulate the 15 assumptions with respect to how that there could be a 16 scenario where the revenues could increase based on 17 making some of these investments because the 18 likelihood of having a cleaner and safer City, that 19 will likely rebound faster than a City that is not. 20 Those assumptions are reflected in the current 21 ten-year proposal. 22 Q. How are they reflected in the ten-year 23 proposal? 24 A. If you look at page -- if you look at</p>
<p>Page 70</p> <p>1 BY THE WITNESS: 2 A. In the context of the \$1.25 billion, I 3 don't recall of a specific initiative where EY 4 articulated a certain dollar amount that needed to be 5 invested for a specific initiative. 6 BY MS. BRUNO: 7 Q. Were there specific initiatives that E&Y 8 took a more significant role in providing guidance or 9 advice for? 10 MR. STEWART: Objection. 11 BY THE WITNESS: 12 A. Not as a part of the \$1.25 billion that's 13 been highlighted here. I do not recall -- there were 14 conversations so that all of the team members 15 understood the assumptions with respect to what was 16 already included in the base case, but I do not recall 17 of any specific guidance in which EY played a greater 18 role in one line item versus the other in the context 19 of that 1.25 billion. That's my recollection. 20 Q. What is the -- what is the impact of these 21 initiatives on revenue collection? 22 A. With respect to the revenue collection, 23 there are two components. One is the overall increase 24 that may come about from the overall improvement in</p>	<p>Page 72</p> <p>1 page -- I'm trying to find the page. 2 On page 105 of 135 -- or actually, 104 of 3 135, under the "reinvestment expenditures and 4 adjustments," under the line item that says "increased 5 tax revenues," that amounted to over a ten-year period 6 roughly \$334.5 million. That was the assumption that 7 overall can the growth rate assumptions that are 8 incorporated in the baseline, can they be made -- will 9 they likely get better in the scenario that you have a 10 restructured city with better operations and a cleaner 11 and safer city. 12 Q. And that is why the increased tax revenues 13 are increasing over the course of that ten-year 14 period, is that correct? 15 A. That is correct, that's generally the 16 trend. 17 Q. State revenue sharing is a source of 18 revenue for the City, correct? 19 A. Yes. 20 Q. Do you know why it declined from \$250 21 million in 2008 to \$173 million in 2012? 22 A. I believe that was what Detroit's share of 23 the reduction was as the State reduced state revenue 24 sharing --</p>



<p>Page 73</p> <p>1 (WHEREUPON, there was a short 2 interruption.) 3 MR. STEWART: Why don't we repeat the question 4 and partial answer. 5 MS. BRUNO: Sure. 6 BY MS. BRUNO: 7 Q. Do you know why that amount declined from 8 \$250 million in 2008 to \$173 million in 2012? 9 A. That was a part of the overall reduction 10 for Detroit's part as the State reduced state revenue 11 sharing for a significant number of cities and 12 municipalities and schooling districts. That was what 13 Detroit's relevant share of the decline was. 14 Q. Do you know how Detroit's relevant share 15 was determined? 16 A. No. 17 Q. Do you know whether it was determined by a 18 specific decision or a formula? 19 A. No. 20 Q. Wouldn't the City be in a better position 21 today if it continued to receive the same level of 22 contribution it received years ago? 23 MR. STEWART: Objection. 24 BY THE WITNESS:</p>	<p>Page 75</p> <p>1 that type of support? 2 A. When you say "including pension 3 contributions," what is your question, is the City -- 4 I mean, asking the State for support for what? 5 Q. To make contributions to the pension, to 6 any other financial support additional that they would 7 provide to the City? 8 A. Just let me make sure I understand. 9 Is your question, has the City asked the 10 State to fund the City's pension contributions? 11 Q. Any actions taken by the City to seek 12 support from the State. 13 A. All right. So that was -- I just -- 14 MR. STEWART: I think -- I think it is her job 15 to ask you questions. You don't need to ask questions 16 of yourself. Why don't you just have her ask you a 17 new question that you can understand. 18 So, ask a new question. 19 BY MS. BRUNO: 20 Q. Are you aware of actions taken by the City 21 to seek support from the State? 22 A. Yes. 23 Q. And what are you aware of, what actions 24 are you aware that the City has taken?</p>
<p>Page 74</p> <p>1 A. If you change the assumptions in terms of 2 the revenues and assuming that there are no changes in 3 any of the expenses, I would say the answer would be 4 yes. 5 BY MS. BRUNO: 6 Q. What are you aware of with respect to 7 actions taken by the City to support -- to pursue 8 support from the State of Michigan, including pension 9 contribution -- contributions and other support? 10 A. I'm sorry. I don't understand your 11 question. 12 Q. What are you aware of with respect to 13 actions taken by the City to pursue support from the 14 State of Michigan regarding pension contributions and 15 other support? 16 MR. STEWART: Objection. 17 BY THE WITNESS: 18 A. Can you rephrase that question, please? 19 BY MS. BRUNO: 20 Q. Sure. Maybe we're not communicating here. 21 Are you aware of actions taken by the City 22 to pursue support from the State of Michigan, 23 including pension contributions and other support? 24 Are you aware of actions taken by the City to pursue</p>	<p>Page 76</p> <p>1 A. That is a part of the financial stability 2 agreement in which I believe Annex E was where the 3 City and the State would collaborate to move on 4 certain initiatives. 5 Q. What role have you had in those 6 conversations or that relationship? 7 MR. STEWART: Objection. 8 BY THE WITNESS: 9 A. Not much, if any, that I recall. 10 BY MS. BRUNO: 11 Q. I'm going to return your attention back to 12 Amendment No. 7. And, again, this amendment is dated 13 July 17, 2013, correct? 14 A. Yes. 15 Q. And the Chapter 9 filing was made by the 16 City on July 18, is that correct? 17 A. Yes. 18 Q. When did Ernst & Young determine that 19 Amendment No. 17 would be necessary? 20 MR. STEWART: Do you mean Amendment No. 7? 21 MS. BRUNO: Amendment No. 7, yeah. 22 BY THE WITNESS: 23 A. I would say it would be in this May, June 24 timeframe. I don't remember of a specific date in the</p>



<p style="text-align: right;">Page 77</p> <p>1 context of, you know, when Amendment No. 7 was 2 initiated. 3 BY MS. BRUNO: 4 Q. And Amendment No. 7 clearly contemplates 5 the filing of a Chapter 9 bankruptcy, does it not? 6 MR. STEWART: Objection. 7 BY THE WITNESS: 8 A. It contemplates a contingency plan. 9 BY MS. BRUNO: 10 Q. Specifically including a filing for 11 Chapter 9? 12 A. That is right, as one of the scenarios, 13 yes. 14 Q. And when this agreement was signed, 15 Ernst & Young understood that a Chapter 9 filing was 16 going to be made, did it not? 17 A. No. 18 Q. When did Ernst & Young understand that the 19 Chapter 9 filing was going to be made? 20 A. We do not -- I do not recall of a specific 21 date when we knew that this would be a date when the 22 City would have to file for Chapter 9. When we 23 prepared the amendment in the June timeframe, which is 24 when we were talking about, we did try to ascertain if</p>	<p style="text-align: right;">Page 79</p> <p>1 out of court, but so I think the key aspect was to at 2 least frame what the financial information was and 3 articulate that to -- to all of the stakeholders up to 4 the best information we had available. 5 Q. Outside of the June 14th proposal and the 6 information contained therein, were there other 7 alternatives that Ernst & Young considered? 8 A. Through the work that EY had done for the 9 City, it was -- and all of the concessions that have 10 been made by various stakeholders at the City 11 including first and foremost the City's active 12 employee base, the Ernst & Young was constantly 13 assisting the City in evaluating what restructuring 14 efforts from a cost reduction standpoint, what sort of 15 savings could be quantified. However, some 16 rationalization or restructuring of the City's legacy 17 liabilities started to become more and more apparent 18 given the declining revenues and combined with the 19 significant amount of concessions the City's active 20 employee base had already endured over the last couple 21 of years. 22 So we looked at different sorts of cost 23 reduction efforts, but a lot of those cost reduction 24 efforts had already and were undertaken over the</p>
<p style="text-align: right;">Page 78</p> <p>1 one of the contingency scenarios would be a Chapter 9. 2 So that scope was included. 3 Q. When did Ernst & Young become aware that 4 the City was going to file for Chapter 9 bankruptcy? 5 A. I do not recall of a specific date. 6 Q. Your declaration is dated July 18th, 7 correct? 8 A. That's when it was signed, yes. 9 Q. And how long did you spend drafting this 10 declaration? 11 A. I don't recall. It could have been 12 probably a week or two is -- I don't recall 13 specifically. 14 Q. You discussed that Chapter 9 was 15 considered -- filing of the Chapter 9 was considered a 16 contingency or one of the alternatives, correct? 17 A. That is correct. 18 Q. At this time, and by that I mean the June, 19 July timeframe or perhaps if it helps to say the -- I 20 want to use the term that you use -- additional summer 21 of 2013 services, what were the other alternatives 22 Ernst & Young analyzed? 23 A. It was essentially in the construct of the 24 June 14th proposal is if a restructuring was possible</p>	<p style="text-align: right;">Page 80</p> <p>1 course of the last few months. 2 Q. Any other alternatives? 3 A. Those are the ones that come to mind in 4 terms of looking at this proposal, other cost 5 reduction efforts that generally come to mind. 6 Q. We discussed at length of forecasting for 7 the general fund as discussed in your declaration. 8 Did Ernst & Young conduct or analyze any 9 additional forecasting for any of the other enterprise 10 funds -- 11 MR. STEWART: Objection. 12 BY MS. BRUNO: 13 Q. -- for the city? 14 A. Not other than that timeframe, the 15 short-term timeframe I already talked about earlier, 16 but we did not make any other assumptions with respect 17 to enterprise fund forecasting other than what I 18 articulated earlier. 19 Q. Do you anticipate providing any additional 20 supporting information or declaration to the City in 21 support of its statement of qualifications? 22 A. Not -- I do not anticipate that as of yet. 23 MS. BRUNO: I think that's all of the questions 24 that I have for this witness at this time.</p>



<p>Page 81</p> <p>1 MR. TEELE: I have a few questions.</p> <p>2 EXAMINATION</p> <p>3 BY MR. TEELE:</p> <p>4 Q. Mr. Malhotra, I am Jason Steele from the</p> <p>5 Lowenstein Sandler firm. We represent AFSCME in this</p> <p>6 case.</p> <p>7 I'm going to do my best not to cover any</p> <p>8 of the ground that Ms. Bruno covered this morning. So</p> <p>9 bear with me for a moment. It might be a little bit</p> <p>10 shaky.</p> <p>11 First, did you review personally any of</p> <p>12 the pleadings that were filed by any of the parties in</p> <p>13 the bankruptcy case objecting to the City's</p> <p>14 eligibility to file Chapter 9 bankruptcy?</p> <p>15 A. Not specifically. I may have glanced</p> <p>16 through a couple, but not any that I recall off the</p> <p>17 top of my head.</p> <p>18 Q. And you have reviewed the June 14th</p> <p>19 creditor proposal, Exhibit 4, is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And, in fact, you actually had some input</p> <p>22 into the creation of this proposal, is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. But ultimately the proposal was prepared</p>	<p>Page 83</p> <p>1 Q. Is that your understanding?</p> <p>2 A. My understanding is that our client is the</p> <p>3 City of Detroit and we are reporting ultimately to</p> <p>4 Kevyn Orr currently.</p> <p>5 Q. And who -- if you know, who appointed</p> <p>6 Mr. Orr to his position?</p> <p>7 A. I can't answer that.</p> <p>8 Q. So you don't know?</p> <p>9 A. Yeah, it is either -- my assumption is</p> <p>10 it's -- whether it's the Emergency Loan Board or the</p> <p>11 Governor, that that would be my understanding.</p> <p>12 Q. Would it be your understanding that the</p> <p>13 Emergency Manager is appointed by the State of</p> <p>14 Michigan as opposed to elected by the people in</p> <p>15 Detroit, is that correct?</p> <p>16 MR. STEWART: Objection.</p> <p>17 BY MR. TEELE:</p> <p>18 Q. Do you know?</p> <p>19 A. I can't answer that.</p> <p>20 Q. Do you currently or does E&Y currently</p> <p>21 report to the Mayor of Detroit?</p> <p>22 A. In terms of the daily activities, our main</p> <p>23 interaction has been with Kevyn Orr and his team in</p> <p>24 the construct of the Proposal For Creditors.</p>
<p>Page 82</p> <p>1 by whom, the Emergency Manager?</p> <p>2 A. It was a proposal that was made by the</p> <p>3 City to its different creditors.</p> <p>4 Q. And the Emergency Manager is the one who</p> <p>5 was the proponent of the proposal, is that right?</p> <p>6 A. I would say it was the City in terms of</p> <p>7 making the proposal to the creditors.</p> <p>8 Q. So, EY is retained by the City of Detroit,</p> <p>9 is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And that was the original retention and</p> <p>12 that's the way it stands today, right?</p> <p>13 A. Yes.</p> <p>14 Q. And you report to -- ultimately to the</p> <p>15 Emergency Manager currently, is that right?</p> <p>16 A. That is correct.</p> <p>17 Q. And the Emergency Manager acts for the</p> <p>18 City of Detroit in place of the City's Mayor and</p> <p>19 Council or other elected representatives, is that</p> <p>20 right?</p> <p>21 MR. STEWART: Objection.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I can't answer that.</p> <p>24 BY MR. TEELE:</p>	<p>Page 84</p> <p>1 Q. And do you report currently to the City</p> <p>2 Council of Detroit?</p> <p>3 A. Our work is in the connection with the</p> <p>4 Proposal For Creditors is generally reported to Kevyn</p> <p>5 Orr and his team.</p> <p>6 Q. Do you meet regularly, you personally or</p> <p>7 any members of your team meet regularly with either</p> <p>8 the Mayor of Detroit or the City Council of Detroit?</p> <p>9 A. Not generally at the current time.</p> <p>10 Q. When was the last time that you had a</p> <p>11 meeting with the Mayor?</p> <p>12 A. Actually, probably just a -- maybe three</p> <p>13 weeks ago or somewhere around that timeframe.</p> <p>14 Q. Do you meet with anybody representing the</p> <p>15 governor of the State of Michigan?</p> <p>16 A. At times we've had meetings with the State</p> <p>17 Treasurer, but I don't recall the last one.</p> <p>18 Q. Have you had any meetings with any state</p> <p>19 representative, state official, such as the Treasurer,</p> <p>20 since the Chapter 9 petition was filed by the City?</p> <p>21 A. Yeah, I think so.</p> <p>22 Q. And who did you meet with at that time?</p> <p>23 A. I think we met with Andy Dillon.</p> <p>24 Q. I'm sorry. Who is --</p>



<p>Page 85</p> <p>1 A. Andy is the State Treasurer. 2 Q. Anybody else? 3 A. Probably Tom Saxton at some point in time. 4 Q. And who is Mr. Saxton? 5 A. I believe he is the Deputy State 6 Treasurer, I think. 7 Q. Did you meet with any state representative 8 prior to the filing of the Chapter 9 petition 9 specifically to discuss whether the Chapter 9 petition 10 should be filed? 11 A. Not to discuss the specific Chapter 9 12 filing. 13 Q. Was your opinion -- when I say your, I'm 14 referring to you as well as your E&Y team. 15 Was your opinion about the filing of the 16 Chapter 9 petition solicited by anybody prior to 17 filing? 18 A. Not specifically in connection with 19 whether the City has to file or does not have to file. 20 I don't remember of a specific conversation whether 21 that was put forth or not. 22 Q. Was it -- did you have a conversation 23 previous -- prior to the filing with respect to 24 whether E&Y believes it would be advisable or</p>	<p>Page 87</p> <p>1 generally familiar with the terms of the tentative 2 agreement? 3 A. This was a while ago, so I'm not -- I have 4 not gone back and refreshed specific terms of the 5 tentative agreement. 6 Q. At the time you were familiar with it? 7 Were you? 8 A. I was generally familiar with it at the 9 time, yeah. 10 Q. And to the best of your recollection, 11 recognizing it was a while ago, the terms of the 12 tentative agreement included changes in employment 13 terms and benefits for active employees as well as 14 retirees, is that correct? 15 A. I don't remember specifically on the 16 construct of the retirees. I do remember that there 17 were changes to the overall compensation and benefits 18 provided to the active employees. 19 Q. But you don't recall specifically whether 20 it dealt at all with retirees? 21 A. Not that I can recall. 22 Q. Do you recall modeling for the City's 23 benefit any impact of these negotiated changes on 24 retiree costs to the City?</p>
<p>Page 86</p> <p>1 inadvisable for the City to file Chapter 9? 2 A. No. EY specifically, our team analyzed 3 that given all of the concessions, the active work 4 force and the cost reduction efforts that had been 5 taking place in addition to some of the efforts with 6 respect to reducing the active work force as well as 7 wage reductions and combined with the declining 8 revenues, that a rationalization or a restructuring of 9 the long-term liabilities of the City may be required. 10 But EY did not specifically have an input whether 11 Chapter 9 was or was not the only alternative. 12 Q. Going back in time just a little bit, in 13 2011 and 2012, an agreement in principle, it is called 14 a tentative agreement, was reached between the City of 15 Detroit and the unions representing its active 16 employees, is that correct? 17 A. Yes, that is my understanding. 18 Q. And E&Y was involved in the negotiations 19 leading to that tentative agreement, is that right? 20 A. E&Y was involved in assisting quantify 21 some of the savings in conjunction and collaboration 22 with the City as the City negotiated with the -- its 23 unions. 24 Q. And based on your involvement, are you</p>	<p>Page 88</p> <p>1 A. Not that I recall with respect to 2 retirees. 3 Q. In approximately late 2012, approximately 4 October of 2012, the Mayor and City Council were 5 working on revenue enhancement measures, is that 6 right? Do you recall that? 7 A. I don't remember of a specific timeframe, 8 but there is always actions that are being undertaken 9 to ascertain and figure out ways to improve the City's 10 revenue position. 11 Q. Once the Detroit Financial Review Team 12 submitted its report to the Governor, and I'm 13 referring to Exhibit 3 from your previous deposition, 14 I think it was handed to you before? 15 MR. STEWART: What is that? 16 MR. TEELE: 3. 17 MR. STEWART: Oh, got it. 18 BY MR. TEELE: 19 Q. When this report was issued to the 20 Governor, do you recall whether the Mayor and City 21 Council publicly responded to the findings? 22 A. I do not recall of the specific response 23 on the findings to the Financial Review Team. 24 (WHEREUPON, a certain document was</p>



<p>1 marked Malhotra Deposition 2 Exhibit No. 9, for identification, as 3 of 09/20/13.) 4 MR. STEWART: So what's the question? 5 MR. TEELE: Does he have the document now? I'm 6 sorry. 7 MR. STEWART: Yes. 8 BY MR. TEELE: 9 Q. Mr. Malhotra, I guess first of all, have 10 you seen this document before? 11 A. I'm sure I have it somewhere. I don't 12 remember reading it with too much detail, but I have 13 it in front of me now. 14 Q. Okay. If you look down at the bottom of 15 page 1 under 1.a, it indicates that, "The 16 Administration, Council President Pugh, Council 17 President Pro-Tem Brown, Councilmember Cockrel, Fiscal 18 staff, Ernst & Young consultants, along with Miller 19 Canfield met over December holiday break to come up 20 with a cash plan with countermeasures to get the City 21 through June 30, 2013." 22 Do you see that? 23 A. Yes, I do. 24 Q. First of all, June 30, 2013, is that the</p>	<p>Page 89 1 tell you that during that particular timeframe the 2 City alongside us was evaluating other significant 3 scenarios as to how further costs could be reduced or 4 cash deferrals could be made in order to assist the 5 City from running out of cash during this timeframe. 6 I do not recall specifically of the conclusion. 7 Q. Okay. And in -- is it true that the City 8 of Detroit would not have run out of cash to fund its 9 operations in fiscal year 2013? 10 MR. STEWART: Objection. 11 BY THE WITNESS: 12 A. Based on what assumptions? 13 BY MR. TEELE: 14 Q. Based on whatever measures the City had 15 been taking to reduce costs or defer expenses. 16 A. It, again, depends. I would have to go 17 back and look at that, the cash flows from that 18 timeframe for fiscal year 2013. But what my 19 recollection is that there were various scenarios that 20 we were looking at, that the City was evaluating, 21 which were predominantly related to cash deferrals or 22 some significant further changes to the compensation 23 of the active employees. 24 Q. Would you agree that the City did not face</p>
<p>1 end of the fiscal year for the City? 2 A. That's correct. 3 Q. Is that why June 30 is the magic date 4 there? 5 MR. STEWART: Objection. 6 BY THE WITNESS: 7 A. It is -- it is the end of the fiscal year 8 for the City. I'll leave it at that. 9 BY MR. TEELE: 10 Q. Were you part of the Ernst & Young 11 consultants referenced here who met over the 12 December holiday break to come up with a plan? 13 A. Yes. 14 Q. And then if you continue reading in that 15 same bullet point on page 2, it says, "The conclusion 16 of the group was that full savings from City 17 Employment Terms, any new contract adjustments and 18 other cash savings measures would materialize in FY 19 2014 to absorb one time reversals without the use of 20 remaining \$50 million in the escrow account." 21 Do you recall whether that is an accurate 22 representation of what the conclusion of the group 23 was? 24 A. I don't recall at this juncture, but I can</p>	<p>Page 90 1 the exhaustion of its cash before the end of calendar 2 year 2013? 3 A. Can you reask that question, please? 4 Q. Do you agree from the perspective of today 5 or, more specifically, from the perspective of the day 6 that the Chapter 9 petition was filed, do you agree 7 that the City did not face exhaustion of its cash 8 until before the end of 2013 calendar year? 9 MR. STEWART: Objection. 10 BY THE WITNESS: 11 A. I would have to go back and look. 12 What I can tell you is in terms of 13 exhaustion in cash accounts on a particular day, the 14 City's general fund is a billion dollar enterprise in 15 which there is daily cash activity. That being said, 16 the amount of cash that the City has which has been 17 publicly reported has pooled cash in there, i.e., cash 18 belonging to other funds potentially and including the 19 deferral of potentially in excess of \$100 million 20 worth of pension payments already and pooling cash 21 from other funds. 22 So, at any particular point in time on 23 that date the overall cash position of the City could 24 have been negative if the City had actually disbursed</p>

<p style="text-align: right;">Page 93</p> <p>1 and the accounts that were either commingled or 2 pooled. But I do not know of that specific time at 3 this juncture. 4 BY MR. TEELE: 5 Q. I'm trying to figure out, would you agree 6 with the statement that the City would not exhaust its 7 cash before the end of calendar year 2013? 8 MR. STEWART: Objection. 9 BY THE WITNESS: 10 A. I don't agree with that because it's based 11 on assumptions and how you look at those assumptions. 12 BY MR. TEELE: 13 Q. If the City took that position, if the 14 City took the position that it would not run out of 15 cash before the end of calendar year 2013, in a 16 pleading filed with the bankruptcy court, would you 17 disagree with that? 18 A. I'm sorry. Are you asking calendar year 19 2013 or fiscal year 2013? 20 Q. I'm asking calendar year 2013. 21 A. That's a hypothetical question. All I can 22 give you in answer is in terms of the assumptions that 23 the City was using with respect to what cash will or 24 will not be available over the course of the next few</p>	<p style="text-align: right;">Page 95</p> <p>1 BY MR. TEELE: 2 Q. Have you seen the document that's in front 3 of you that's been marked as Exhibit 10? 4 A. No. 5 Q. You've never seen this. 6 MS. BRUNO: Jason, can you identify for the 7 record the Bates number on Exhibit 10. 8 MR. TEELE: Yes. It is DTM100117210 through 9 7215. 10 MS. BRUNO: Thank you. 11 BY MR. TEELE: 12 Q. I'm sorry. Mr. Malhotra, did you say you 13 have never seen this document before? 14 A. That's what I said, no. 15 Q. If you've never seen it, then I'm not 16 going to waste your time asking you questions about 17 it. 18 (WHEREUPON, a certain document was 19 marked Malhotra Deposition 20 Exhibit No. 11, for identification, 21 as of 09/20/13.) 22 BY MR. TEELE: 23 Q. Before we go very far, can you just tell 24 me if you have ever seen this document before?</p>
<p style="text-align: right;">Page 94</p> <p>1 months in terms of the assumptions that were being 2 used. If that means significant deferrals and 3 continuing to increase the indebtedness, there are 4 various assumptions that can be used. So I do not 5 know of the specific assumptions you are referring to. 6 Q. Now, you know that the City filed a brief, 7 a legal pleading in the bankruptcy court arguing that 8 the City is eligible to file Chapter 9 under the 9 Bankruptcy Code; are you aware of that? 10 A. Yes. 11 Q. Did you review that brief before it was 12 filed with the bankruptcy court? 13 A. Not extensively, that I recall. 14 MR. STEWART: Jason, if you don't have enough 15 copies, I will have to insist that I have one. I 16 can't have my witness being examined with a document 17 that I can't look at. 18 MR. TEELE: You can have mine when I'm done. 19 MS. BRUNO: Okay. 20 MR. TEELE: No problem. 21 (WHEREUPON, a certain document was 22 marked Malhotra Deposition 23 Exhibit No. 10, for identification, 24 as of 09/20/13.)</p>	<p style="text-align: right;">Page 96</p> <p>1 A. I generally recall seeing this. 2 Q. Okay. This document does not have Bates 3 numbers, but it is identified as City of Detroit 4 Restructuring Plan, Mayor's Implementation Progress 5 Report, dated March 2013. 6 Were you -- was Ernst & Young involved in 7 preparing this report? 8 A. This format generally looks like what we 9 were using, but I do not know -- remember specifically 10 what parts of this report we may or may not have 11 assisted in. 12 Q. And if you look at page 5 of the report, 13 that slide deals with the topic Financial Stability. 14 Do you see that? 15 A. Uh-huh. 16 Q. And it says that the City has a plan "to 17 address the City's \$150 million annual structural 18 deficit." 19 Do you see that at the top of that page? 20 A. Yes. 21 Q. At the time this was prepared, did E&Y 22 have a view, an opinion as to whether the \$150 million 23 of revenue and cost savings that are identified on 24 this slide were sufficient to get the City through</p>



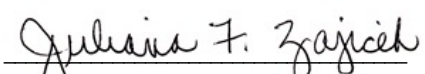
<p>Page 97</p> <p>1 fiscal year 2013?</p> <p>2 A. So you are stretching back to fiscal year</p> <p>3 2013.</p> <p>4 Q. Well, to be fair, the next question will</p> <p>5 be what about calendar year 2013. If you want to</p> <p>6 address it all at once, go ahead.</p> <p>7 A. I don't know about the calendar year 2013.</p> <p>8 In terms of view with respect to running out of cash,</p> <p>9 I don't remember whether this would or would not have</p> <p>10 been enough, but from a fiscal year 2013 standpoint,</p> <p>11 depending on the assumptions that you use. That being</p> <p>12 said, that, you know, these revenue enhancement</p> <p>13 initiatives and some of these cost savings may, you</p> <p>14 know, have -- some of these have been already</p> <p>15 incorporated, i.e., these achieved cost savings of</p> <p>16 \$150 million says it's achieved, so my assumption is</p> <p>17 they would have already been incorporated in whatever</p> <p>18 assumptions we had.</p> <p>19 Q. I'm going to jump ahead a little bit.</p> <p>20 Are you aware whether the Emergency</p> <p>21 Manager met with stakeholders regarding the Proposal</p> <p>22 For Creditors, which is Exhibit 4?</p> <p>23 A. Yes, there was -- the Emergency Manager</p> <p>24 was present at the June 14 proposal in which the</p>	<p>Page 99</p> <p>1 meeting at the Westin Hotel?</p> <p>2 A. So, when you say individual stakeholders,</p> <p>3 can you explain what you are referring to?</p> <p>4 Q. Let's take a step back.</p> <p>5 So the June 14th meeting at the Westin</p> <p>6 Hotel, that was with many creditors, right?</p> <p>7 A. That's right.</p> <p>8 Q. Was it open to the public, anybody who</p> <p>9 wanted to come and listen to come or was it more</p> <p>10 discrete than that?</p> <p>11 A. I don't recall specifically how the</p> <p>12 logistics of it were handled. I do not think it was</p> <p>13 open to all of the general public, but I'm not sure.</p> <p>14 I do not believe it was.</p> <p>15 Q. But there were different -- there were</p> <p>16 several different creditors in -- in attendance, as</p> <p>17 far as you know, correct?</p> <p>18 A. That is correct, yes.</p> <p>19 Q. So there would have been financial</p> <p>20 creditors like bondholders present, do you know?</p> <p>21 A. That's my assumption, yes.</p> <p>22 Q. And were employee representatives, such as</p> <p>23 unions, like AFSCME, my client, do you know if those</p> <p>24 kinds of creditors were also present?</p>
<p>Page 98</p> <p>1 majority of creditors, if not all -- a significant</p> <p>2 number of creditors were present.</p> <p>3 Q. And were you present for that meeting?</p> <p>4 A. Yes, I was.</p> <p>5 Q. Where was that meeting?</p> <p>6 A. That was at the Westin Hotel by the</p> <p>7 airport.</p> <p>8 Q. In Detroit?</p> <p>9 A. That is correct.</p> <p>10 Q. Were there other meetings that you are</p> <p>11 aware of between the Emergency Manager and individual</p> <p>12 stakeholders regarding the Proposal For Creditors?</p> <p>13 A. You would have to ask the Emergency</p> <p>14 Manager that. I do not know of his specific calendar.</p> <p>15 Q. No. I'm asking if you are aware of any</p> <p>16 meetings?</p> <p>17 A. I'm not aware of whether he did or did not</p> <p>18 have meetings. I do not maintain his calendar.</p> <p>19 Q. And you were not present at any</p> <p>20 meetings -- any such meetings, correct?</p> <p>21 A. Any what such meetings?</p> <p>22 Q. Between the Emergency Manager or his</p> <p>23 representatives and individual stakeholders regarding</p> <p>24 the Proposal For Creditors outside of the June 14th</p>	<p>Page 100</p> <p>1 A. I think they were.</p> <p>2 Q. So, after that meeting, are you aware --</p> <p>3 did you attend any meetings with the Emergency Manager</p> <p>4 and any individual creditor group regarding this</p> <p>5 Proposal For Creditors?</p> <p>6 A. We've had meetings subsequent to the June</p> <p>7 14th proposal. I do not recall if the Emergency</p> <p>8 Manager was present in person or not, but along with</p> <p>9 the other advisers that have been helping the City,</p> <p>10 there have been meetings with other stakeholders to</p> <p>11 discuss things like healthcare plans, both on the</p> <p>12 active and retiree side, but if -- I do not recall if</p> <p>13 there was a specific meeting where Kevyn was or was</p> <p>14 not involved.</p> <p>15 Q. Okay. And do you recall who you met with</p> <p>16 in terms of the stakeholder group?</p> <p>17 A. I think in general at the meetings for</p> <p>18 the -- on the healthcare side were with some of the</p> <p>19 union representatives and that there were similar</p> <p>20 meetings on the retiree side. However, at that point</p> <p>21 in time, there was not an official retiree committee</p> <p>22 that was appointed, at least as of June 20th from what</p> <p>23 I recall.</p> <p>24 Q. Do you remember approximately when the</p>



<p style="text-align: right;">Page 101</p> <p>1 last of those meetings occurred?</p> <p>2 A. When the last of which meetings</p> <p>3 specifically?</p> <p>4 Q. The meetings with the Emergency Manager's</p> <p>5 representatives or consultants, such as EY, and</p> <p>6 individual stakeholder groups?</p> <p>7 A. There was a meeting a week or ten days ago</p> <p>8 with the Official Committee of the Retirees and their</p> <p>9 respective advisers along with Kevyn Orr and his</p> <p>10 advisers.</p> <p>11 Q. And was that meeting specifically to</p> <p>12 discuss the Proposal For Creditors or was that a</p> <p>13 meeting generally to discuss, you know, what's</p> <p>14 happening in the bankruptcy case?</p> <p>15 A. I think that that's -- when you asked --</p> <p>16 your question was when was the last meeting, that's</p> <p>17 what I thought you said.</p> <p>18 Q. The question was when was the last such</p> <p>19 meeting, such meeting being the meeting where the</p> <p>20 Proposal For Creditors was discussed with individual</p> <p>21 stakeholders?</p> <p>22 MR. STEWART: I think that reveals the defect in</p> <p>23 the form because the client couldn't follow the</p> <p>24 question. Why don't you start over again so we don't</p>	<p style="text-align: right;">Page 103</p> <p>1 Creditors?</p> <p>2 MR. STEWART: Can I have the question reread,</p> <p>3 please.</p> <p>4 (WHEREUPON, the record was read</p> <p>5 by the reporter as requested, as</p> <p>6 follows:</p> <p>7 "Q. And I'm asking you, when</p> <p>8 was -- to the best of your knowledge,</p> <p>9 when was the last meeting -- when did</p> <p>10 the last meeting take place at which</p> <p>11 either the Emergency Manager or his</p> <p>12 representatives were present along</p> <p>13 with individual creditors of Detroit</p> <p>14 for the specific purpose of</p> <p>15 discussing the Proposal For</p> <p>16 Creditors?")</p> <p>17 BY MR. TEELE:</p> <p>18 Q. That's a horrible question. Let's ask it</p> <p>19 this way.</p> <p>20 To your knowledge, when was the last</p> <p>21 meeting with stakeholders before the Chapter 9 filing?</p> <p>22 A. There were a series of meetings that were</p> <p>23 happening between the June 14th timeframe and when the</p> <p>24 Chapter 9 filing took place. I do not know if -- and</p>
<p style="text-align: right;">Page 102</p> <p>1 have this ambiguity in the record.</p> <p>2 BY MR. TEELE:</p> <p>3 Q. Hopefully that clarifies it.</p> <p>4 Do you understand the question now?</p> <p>5 A. I think I would like you to ask the</p> <p>6 question again, please.</p> <p>7 Q. So, on June 14th there was a meeting</p> <p>8 between the emergency manager and his representatives</p> <p>9 and various stakeholders in the City's bankruptcy</p> <p>10 case -- or potential bankruptcy case regarding the</p> <p>11 Proposal For Creditors, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And I think you testified that subsequent</p> <p>14 to June 14th, you're aware of meetings between</p> <p>15 representatives of the Emergency Manager and</p> <p>16 individual creditors regarding the Proposal For</p> <p>17 Creditors. Did I --</p> <p>18 A. That is correct.</p> <p>19 Q. And I'm asking you, when was -- to the</p> <p>20 best of your knowledge, when was the last meeting --</p> <p>21 when did the last meeting take place at which either</p> <p>22 the Emergency Manager or his representatives were</p> <p>23 present along with individual creditors of Detroit for</p> <p>24 the specific purpose of discussing the Proposal For</p>	<p style="text-align: right;">Page 104</p> <p>1 I was not present in every single meeting. So I do</p> <p>2 not know of the last specific date. But there were a</p> <p>3 series of meetings between the June 14 proposal and</p> <p>4 the filing date with not only, as you said, the banks</p> <p>5 as one of the stakeholders, but also discussions with</p> <p>6 union members or, you know, potentially some retirees.</p> <p>7 Q. Do you know whether the June 14th proposal</p> <p>8 for creditors has been revised at all?</p> <p>9 A. Not -- not -- not to my knowledge</p> <p>10 specifically that it has been revised from an overall</p> <p>11 structure standpoint. I mean, are you -- do you have</p> <p>12 a specific question on that June 14th proposal?</p> <p>13 Q. I just want to know if any changes have</p> <p>14 been made based on any meetings with stakeholders,</p> <p>15 that you are aware of?</p> <p>16 A. I do not -- I do not know -- I need to</p> <p>17 just give some thought through all of the back and</p> <p>18 forth where the City was soliciting input and from its</p> <p>19 different stakeholders, you know, what the revisions,</p> <p>20 if any, have been. But I'm just trying to recall if I</p> <p>21 know of any specific changes that have already been</p> <p>22 incorporated based on either recommendations of</p> <p>23 proposals, if any, that were made by some of the</p> <p>24 different stakeholders.</p>



<p style="text-align: right;">Page 105</p> <p>1 Q. Going back a little bit, with respect to</p> <p>2 the ten-year projections, do you recall who instructed</p> <p>3 EY to begin compiling or preparing the ten-year</p> <p>4 projections?</p> <p>5 A. I think it was generally the former CFO</p> <p>6 and the former program management director.</p> <p>7 Q. And they did that prior to or after the</p> <p>8 appointment of the Emergency Manager?</p> <p>9 A. I have to recall. We started with a</p> <p>10 five-year projection that we would start figuring out</p> <p>11 whether we do a five-year or a ten-year and then we</p> <p>12 transitioned from five-year to ten-year. I don't</p> <p>13 recall specifically at what timeframe.</p> <p>14 Q. And then why did you transition from</p> <p>15 five-year to ten-year?</p> <p>16 A. Just from the nature of looking at the</p> <p>17 City's liabilities, having a longer term view was more</p> <p>18 relevant versus having a shorter term view.</p> <p>19 Q. Generally speaking, the longer you project</p> <p>20 financial performance of an entity, government entity</p> <p>21 or even a private entity, does your confidence in the</p> <p>22 results shown in the projections decrease with the</p> <p>23 longer period? In other words -- I'm sorry.</p> <p>24 Did you understand that question?</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. And you used information that you were</p> <p>2 able to obtain directly from the City's -- directly</p> <p>3 from the City, the different agencies and departments</p> <p>4 of the City in your ten-year projections, right?</p> <p>5 A. Not necessarily. The City does not have</p> <p>6 any ten-year projections currently. The data that we</p> <p>7 used was based on ascertaining what historical</p> <p>8 information was available and then using those --</p> <p>9 using that data alongside some of the assumptions that</p> <p>10 we got from the other advisers, helping pull together</p> <p>11 ten-year assumptions. I do not know of any ten-year</p> <p>12 assumptions the City had historically that we would</p> <p>13 have used as a starting point.</p> <p>14 Q. But you didn't create the historical -- in</p> <p>15 other words, you didn't -- again, you didn't create</p> <p>16 the historical data yourself from -- from original</p> <p>17 sources, did you? You took -- did you?</p> <p>18 A. When you -- you've got to rephrase that</p> <p>19 question.</p> <p>20 Q. You took the historical data directly from</p> <p>21 the City?</p> <p>22 A. The City's historical data, we took the</p> <p>23 data that the City gave us and then made sure that</p> <p>24 what data was reasonable, how we would actually look</p>
<p style="text-align: right;">Page 106</p> <p>1 A. I did.</p> <p>2 Q. Okay.</p> <p>3 A. As long as you are making reasonable</p> <p>4 assumptions for a five-year or a ten-year timeframe,</p> <p>5 the comfort along certain assumptions in the short</p> <p>6 term when they are based on recent trends is always</p> <p>7 higher than projections that are in the long term.</p> <p>8 That being said, it also depends on the reasonableness</p> <p>9 of the assumptions in terms of the comfort level.</p> <p>10 Q. And is it true that EY did not compile the</p> <p>11 data that is included in the buildup to the ten-year</p> <p>12 projections?</p> <p>13 A. We did not audit the data. When you say</p> <p>14 compile the data, if you can rephrase your question.</p> <p>15 Q. You took data from other sources, for</p> <p>16 example, from the CAFR, the Comprehensive Annual</p> <p>17 Financial Report, right?</p> <p>18 A. That was one source.</p> <p>19 Q. Right. That's one source. And there are</p> <p>20 other sources.</p> <p>21 And you took data that was compiled by</p> <p>22 other consultants retained by the City, for example,</p> <p>23 by Milliman, is that right?</p> <p>24 A. For certain assumptions.</p>	<p style="text-align: right;">Page 108</p> <p>1 at the assumptions and that historical data. So we</p> <p>2 had to look at the data, look at what the assumptions</p> <p>3 were with respect to how that data was classified, how</p> <p>4 that data was categorized to make sure that we could</p> <p>5 actually use that data. So there wasn't just a raw</p> <p>6 data dump in which we could use that data in its</p> <p>7 original form without having to analyze it further.</p> <p>8 Q. All right. See, that's where my confusion</p> <p>9 is, because I thought that you had testified earlier</p> <p>10 that you didn't really audit data?</p> <p>11 A. That's right.</p> <p>12 Q. And you didn't go back to --</p> <p>13 MR. STEWART: You have to wait for a question.</p> <p>14 He is not asking you a question.</p> <p>15 BY MR. TEELE:</p> <p>16 Q. And you didn't, for example -- and I think</p> <p>17 you gave this example, you didn't go back to the</p> <p>18 original bond offering documents to make sure that the</p> <p>19 amounts stated in the data that you were using was</p> <p>20 correct, right?</p> <p>21 MR. STEWART: Well, wait a minute. What's the</p> <p>22 question? That was a speech essentially. Just ask a</p> <p>23 question.</p> <p>24 BY MR. TEELE:</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. I'm going to move on. It's a point of 2 confusion in my head, but I'll move on. 3 MR. STEWART: I think the transcript will clear 4 it up. I think it was covered. 5 MR. TEELE: I don't have anything further. 6 Thank you. 7 MR. STEWART: Does anyone else have questions? 8 MS. BRUNO: Why don't we take a short break so I 9 can communicate with everyone on the phone. 10 MR. STEWART: Okay. 11 MS. BRUNO: And then we can come back to you. 12 MR. STEWART: Okay. 13 (WHEREUPON, a recess was had 14 from 12:22 to 12:30 p.m.) 15 MS. BRUNO: We are back on. 16 Counsel on the phone, we are back on the 17 record. And I believe when we went off the record, we 18 were going through the people on the phone on a roll 19 call to see if anyone has any questions for 20 Mr. Malhotra. 21 MR. PLECHA: Ryan Plecha from the Association 22 Parties, we do not have any questions. 23 MR. STEVENSON: This is John Stevenson from 24 Clark Hill. I do not have any questions.</p>	<p style="text-align: right;">Page 111</p> <p>1 A. No. 2 Q. Was the CAFR audited? 3 A. Yes. 4 Q. Audited by who? 5 A. KPMG. 6 Q. And tell us who or what is KPMG? 7 A. KPMG is the City's auditor and it is 8 another Big 4 accounting firm. 9 Q. Is it one of the international accounting 10 firms that is known in the United States and 11 elsewhere? 12 A. Yes. 13 Q. Comparable to E&Y in terms of what it 14 does? 15 A. Generally, yes. 16 MR. STEWART: Okay. That's all I have. 17 Thank you. 18 MR. TEELE: I have no questions. 19 MR. STEWART: So is the record closed? 20 MS. BRUNO: It is at this time. 21 MR. STEWART: Okay. 22 (Time Noted: 12:32 p.m.) 23 FURTHER DEPONENT SAITH NOT. 24</p>
<p style="text-align: right;">Page 110</p> <p>1 MS. TAUNT: Meredith Taunt on behalf of the 2 Retired Detroit Police Members Association. We do not 3 have any questions. 4 MS. BRUNO: Anyone else on the phone? 5 MS. KAUFMAN: This is Dana Kaufman for Financial 6 Guaranty Insurance Company. We do not have any 7 questions. 8 MR. STEWART: This is Jeff Stewart, I have just 9 a few questions of Mr. Malhotra, from Jones Day. I 10 represent the witness and also the City, just a few 11 questions. 12 EXAMINATION 13 BY MR. STEWART: 14 Q. Mr. Malhotra, you were asked in your 15 deposition about a document called the Comprehensive 16 Annual Financial Report of the City of Detroit. 17 Do you remember being asked about that? 18 A. Yes. 19 Q. That's sometimes called a CAFR, C-A-F-R? 20 A. Yes. 21 Q. Did E&Y audit the CAFR? 22 A. No. 23 Q. Or audit the accounts that led to the 24 creation of the CAFR?</p>	<p style="text-align: right;">Page 112</p> <p>1 REPORTER'S CERTIFICATE 2 I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604, 3 a Certified Shorthand Reporter, do hereby certify: 4 That previous to the commencement of the 5 examination of the witness herein, the witness was 6 duly sworn to testify the whole truth concerning the 7 matters herein; 8 That the foregoing deposition transcript 9 was reported stenographically by me, was thereafter 10 reduced to typewriting under my personal direction and 11 constitutes a true record of the testimony given and 12 the proceedings had; 13 That the said deposition was taken before 14 me at the time and place specified; 15 That I am not a relative or employee or 16 attorney or counsel, nor a relative or employee of 17 such attorney or counsel for any of the parties 18 hereto, nor interested directly or indirectly in the 19 outcome of this action. 20 IN WITNESS WHEREOF, I do hereunto set my 21 hand on this 21st day of September, 2013. 22 23  24 JULIANA F. ZAJICEK, Certified Reporter</p>



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<div style="text-align: center;">I N D E X</div> <p>WITNESS: PAGE:</p> <p>GAURAV MALHOTRA</p> <p>EXAM BY MS. BRUNO..... 7</p> <p>EXAM BY MR. TEELE..... 81</p> <p>EXAM BY MR. STEWART..... 110</p> <p style="text-align: center;">*****</p> <div style="text-align: center;">E X H I B I T S</div> <p>MALHOTRA EXHIBIT MARKED FOR ID</p> <table style="width: 100%;"> <tr> <td style="width: 10%;">No. 8</td> <td style="width: 80%;">Amendment No. 7 to Statement of Work; DTF0TA0000001 - 008.....</td> <td style="width: 10%; text-align: right;">18</td> </tr> <tr> <td>No. 9</td> <td>Letter dated February 22, 2013, To: Councilmembers; From: Irvin Corley, Jr., Director Fiscal Analysis Division and David D. Whitaker, Director Research & Analysis Division; Re: Comments on the Report of the Detroit Financial Review Team; DTM100097150 - 154.....</td> <td style="text-align: right;">89</td> </tr> <tr> <td>No. 10</td> <td>Document titled: Detroit City Council Rational for Appeal; DTM100117210 - 215.....</td> <td style="text-align: right;">94</td> </tr> <tr> <td>No. 11</td> <td>37-page document titled: City of Detroit - Restructuring Plan, Mayor's Implementation Progress Report, March 2013.....</td> <td style="text-align: right;">95</td> </tr> </table> <p style="text-align: center;">REQUEST FOR DOCUMENTS Page 16</p>	No. 8	Amendment No. 7 to Statement of Work; DTF0TA0000001 - 008.....	18	No. 9	Letter dated February 22, 2013, To: Councilmembers; From: Irvin Corley, Jr., Director Fiscal Analysis Division and David D. Whitaker, Director Research & Analysis Division; Re: Comments on the Report of the Detroit Financial Review Team; DTM100097150 - 154.....	89	No. 10	Document titled: Detroit City Council Rational for Appeal; DTM100117210 - 215.....	94	No. 11	37-page document titled: City of Detroit - Restructuring Plan, Mayor's Implementation Progress Report, March 2013.....	95	<div style="text-align: center;">DEPOSITION ERRATA SHEET</div> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>SIGNATURE: _____ DATE: _____</p> <p style="text-align: center;">GAURAV MALHOTRA</p>
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<div style="text-align: center;">Page 114</div> <div style="text-align: center;">DEPOSITION ERRATA SHEET</div> <p>Assignment No. 472371</p> <p>Case Caption: In Re: City of Detroit, Michigan</p> <p style="text-align: center;">DECLARATION UNDER PENALTY OF PERJURY</p> <p>I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 111, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.</p> <p style="text-align: center;">GAURAV MALHOTRA</p> <p>SUBSCRIBED AND SWORN TO before me this _____ day of _____, A.D. 200 .</p> <p style="text-align: center;">Notary Public</p>	<div style="text-align: center;">Page 116</div> <div style="text-align: center;">DEPOSITION ERRATA SHEET</div> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>Page No. _____ Line No. _____ Change to: _____</p> <p>Reason for change: _____</p> <p>SIGNATURE: _____ DATE: _____</p> <p style="text-align: center;">GAURAV MALHOTRA</p>												

EXHIBIT D

Page 1	Page 3
<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 In re Chapter 9</p> <p>6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846</p> <p>7 Debtor. Hon. Steven W. Rhodes</p> <p>8 _____/</p> <p>9</p> <p>10 DEPONENT: CHARLES M. MOORE</p> <p>11 DATE: Wednesday, September 18, 2013</p> <p>12 TIME: 10:02 a.m.</p> <p>13 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC</p> <p>14 150 West Jefferson, Suite 2500</p> <p>15 Detroit, Michigan</p> <p>16 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 COHEN WEISS AND SIMON LLP</p> <p>4 By: Thomas N. Ciantra</p> <p>5 330 West 42nd Street</p> <p>6 New York, NY 10036.6979</p> <p>7 212.356.0216</p> <p>8 Appearing on behalf of UAW</p> <p>9</p> <p>10 LOWENSTEIN SANDLER LLP</p> <p>11 By: Sharon L. Levine</p> <p>12 65 Livingston Avenue</p> <p>13 Roseland, NJ 07068</p> <p>14 973.597.2374</p> <p>15 -and-</p> <p>16 Michael L. Artz (appearing telephonically)</p> <p>17 Appearing on behalf of AFSCME</p> <p>18</p> <p>19 CLARK HILL PLC</p> <p>20 By: Andrew Mast</p> <p>21 Ed Hammond (appearing telephonically)</p> <p>22 500 Woodward Avenue, Suite 3500</p> <p>23 Detroit, MI 48226</p> <p>24 313.965.8384</p> <p>25 Appearing on behalf of Retirement Systems</p>
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2			2	Wednesday, September 18, 2013	
3	WITNESS	PAGE	3	* * *	
4	CHARLES M. MOORE		4	CHARLES M. MOORE	
5	Examination by Mr. Ruegger	10	5	was thereupon called as a witness herein, and after having	
6	Examination by Ms. Levine	69	6	first been duly sworn to tell the truth, the whole truth,	
7	Examination by Mr. Ciantra	127	7	and nothing but the truth, was examined and testified as	
8	Examination by Mr. Ruegger (continued)	163	8	follows:	
9			9	MR. RUEGGER: Good morning, everyone. My	
10	E X H I B I T S		10	name is Arthur Ruegger from the Dentons firm, we	
11	NUMBER IDENTIFICATION PAGE		11	represent the Retirees Committee. I guess I'll be the	
12	Exhibit 1 Declaration of Charles M. Moore	11	12	first one to ask the questions today, but there should	
13	Exhibit 2 Memorandum in Support	39	13	be others later on.	
14	Exhibit 3 Proposal for Creditors, 6/14/2013	50	14	Good morning, Mr. Moore.	
15	Exhibit 4 DTMI00106352 through 6353	70	15	THE WITNESS: Good morning.	
16	Exhibit 5 DTMI00106348 through 6349	72	16	MR. RUEGGER: A couple of preliminaries.	
17	Exhibit 6 DTMI00078512 through 8514	73	17	But I guess even before that, let's do a roll call.	
18	Exhibit 7 DTMI00106319 through 106320	81	18	We'll go around the table first and then ask for	
19	Exhibit 8 DTMI00079527	82	19	people on the phone to identify themselves. Why don't	
20	Exhibit 9 DTMI00079526	83	20	we start with you, Sharon.	
21	Exhibit 10 DTMI00079528 through 79530	88	21	MS. LEVINE: Sharon Levine, Lowenstein	
22			22	Sandler, for AFSCME.	
23			23	MR. CIANTRA: I'm Thomas Ciantra, I'm with	
24			24	Cohen Weiss and Simon, LLP, for the UAW.	
25			25	MR. MAST: Drew Mast, Clark Hill, for the	



<p style="text-align: right;">Page 9</p> <p>1 Retirement Systems. 2 MR. ESSAD: Ernest Essad, Williams, 3 Williams, on behalf of FGIC. 4 MR. GREEN: Jonathan Green, Miller 5 Canfield, Paddock and Stone, for the City. 6 MR. MILLER: Evan Miller, Jones Day, for 7 the City. 8 THE WITNESS: Charles Moore, 9 Conway MacKenzie, the deponent. 10 MR. RUEGGER: Okay, that takes care of 11 people at the table. On the phone, please? 12 MR. MILLER: Ladies and gentlemen on the 13 phone, please identify yourselves. 14 MR. FORDE: Bianca Forde, Winston & Strawn, 15 on behalf of Assured Guaranty Municipal Corp. 16 MR. HAMMOND: Ed Hammond, Clark Hill, for 17 the Retirement Systems. 18 MS. COX: Meredith Cox, Strobl & Sharp, on 19 behalf of the Retired Detroit Police Members 20 Association. 21 MR. MORRIS: Thomas Morris of Silverman & 22 Morris on behalf of the retired Detroit cities 23 employees association and the -- I'm sorry, let me 24 restate that. The Detroit Retired City Employees 25 Association and the Retired Detroit Police and</p>	<p style="text-align: right;">Page 11</p> <p>1 nodding or the shaking of the head -- 2 A. Yes. 3 Q. -- do you understand that one? I would like to 4 start -- 5 MR. MILLER: Well, excuse me, Mr. Ruegger. 6 This is Evan Miller and I would like to make an 7 introductory note on the record. Mr. Moore is being 8 made available today for this deposition in compliance 9 with the bankruptcy court's September 12th order 10 respecting discovery and in compliance with subpoenas 11 that were issued by both Council 25 of AFSCME and the 12 UAW. Mr. Moore is also being made available today by 13 the City as the City's representative in part in 14 connection with a 30(b)(6) deposition notice that 15 AFSCME has issued to the City and in connection with 16 certain but not all of the topics that AFSCME in that 17 notice identified. In connection with the deposition 18 today all objections are reserved except as to form. 19 MR. RUEGGER: I'm going to ask the court 20 reporter to mark as Moore Exhibit 1 a copy of 21 Mr. Moore's declaration dated July 18th, 2013. I have 22 four copies for people. People probably have copies, 23 but to the extent they don't, there are some here. 24 (Marked Exhibit No. 1.) 25 Q. Mr. Moore, is that your declaration that's been marked</p>
<p style="text-align: right;">Page 10</p> <p>1 Firefighters Association. 2 MR. RUEGGER: Okay, that's probably 3 everyone then. 4 EXAMINATION 5 BY MR. RUEGGER: 6 Q. As I said, good morning, Mr. Moore. 7 A. Good morning. 8 Q. I want to cover a couple of preliminary customs so 9 that everybody understands. A number of us are going 10 to ask you questions today. I'm going to ask that you 11 allow each of us to complete the questions before you 12 answer. The court reporter will have trouble taking 13 two people at the same time. Similarly, if people 14 have objections, I would ask that they allow the 15 question to be completed before they interpose the 16 objection. 17 Mr. Moore, if you don't understand a 18 question that any of us asks, please say so and we 19 will try to rephrase it. If you don't mention that 20 you don't understand it, we'll assume that you do 21 understand the question. Is that fair enough? 22 A. It is, yes. 23 Q. And there may be other customs. The only other one I 24 want to mention is that I ask that you respond 25 audibly, because the court reporter can't record the</p>	<p style="text-align: right;">Page 12</p> <p>1 as Moore Exhibit 1? 2 A. Yes, it appears to be. 3 Q. Are you presently employed, Mr. Moore? 4 A. Yes. 5 Q. By whom? 6 A. Conway MacKenzie, Inc. 7 Q. And how long have you been with Conway MacKenzie, 8 Inc.? 9 A. For 12 years. 10 Q. What was your position when you first started with 11 Conway MacKenzie? 12 A. I was a senior associate. 13 Q. And can you tell us what positions you held at 14 Conway MacKenzie between that position and the one you 15 currently hold? 16 A. I believe I held the titles of senior associate and 17 then director, managing director and eventually senior 18 managing director, which is my current title. 19 Q. When did you become a senior managing director? 20 A. I don't recall exactly, but I think it was January 1st 21 of 2008. 22 Q. Your declaration refers to your educational background 23 and I'll direct your attention to paragraph 4. 24 Declaration is accurate, I take it, that you have a 25 bachelor's of arts and a master's of business</p>



<p>Page 13</p> <p>1 administration from Michigan State?</p> <p>2 A. Yes, sir.</p> <p>3 Q. When did you get your bachelor's degree?</p> <p>4 A. In 1994.</p> <p>5 Q. And when did you get your master's degree?</p> <p>6 A. The same year. I was enrolled in a five-year program</p> <p>7 which essentially granted both degrees at the same</p> <p>8 time.</p> <p>9 Q. Did you have any specialty or concentration with</p> <p>10 regard to your bachelor of arts degree?</p> <p>11 A. Yes, accounting.</p> <p>12 Q. And what about your MBA?</p> <p>13 A. Yes, the track was professional accounting.</p> <p>14 Q. What was your first job after you received your</p> <p>15 degrees in 1994?</p> <p>16 A. I was employed by Deloitte and Touche.</p> <p>17 Q. And what was your position at Deloitte and Touche?</p> <p>18 A. I believe the title may have been associate.</p> <p>19 Q. And how long were you with Deloitte and Touche?</p> <p>20 A. Approximately five-and-a-half years.</p> <p>21 Q. And what areas did you concentrate in at Deloitte and</p> <p>22 Touche?</p> <p>23 A. I spent the majority of my time in the middle market</p> <p>24 consulting group doing performance improvement and</p> <p>25 other consulting services for middle market companies.</p>	<p>Page 15</p> <p>1 A. Until October of 2001.</p> <p>2 MR. RUEGGER: Okay, did someone just join</p> <p>3 the deposition?</p> <p>4 MR. ARTZ: Yes, this is Michael Artz from</p> <p>5 AFSCME on the phone.</p> <p>6 MR. RUEGGER: Thank you, Michael.</p> <p>7 MS. LEVINE: Hi, Michael.</p> <p>8 MR. ARTZ: Good morning.</p> <p>9 Q. So now we're October 2001. Where did you go then?</p> <p>10 A. That is when I joined Conway MacKenzie.</p> <p>11 Q. And have you undertaken any area of special</p> <p>12 concentration at Conway MacKenzie?</p> <p>13 A. There are a number of industries that I tend to focus</p> <p>14 a lot of my time on as well as certain services that</p> <p>15 the firm provides.</p> <p>16 Q. And what are the industries that you focus on?</p> <p>17 A. Automotive, gaming and hospitality, governmental,</p> <p>18 construction and real estate, financial services and</p> <p>19 there are a few others as well but those are the major</p> <p>20 ones.</p> <p>21 Q. And does that list include the services that you also</p> <p>22 concentrate in at Conway MacKenzie?</p> <p>23 A. The service lines that I participate in are separate</p> <p>24 from industries. The service lines tend to be in the</p> <p>25 area of turnaround consulting, performance</p>
<p>Page 14</p> <p>1 Q. And when you left Deloitte and Touche, what was your</p> <p>2 next employer?</p> <p>3 A. I became the chief financial officer for Horizon</p> <p>4 Technology.</p> <p>5 Q. Can you spell that? Horizon, H-O-R --</p> <p>6 A. Yes, sir. H-O-R-I-Z-O-N.</p> <p>7 Q. And what was the business of Horizon Technology?</p> <p>8 A. Horizon had a variety of businesses. The bulk of the</p> <p>9 operations were automotive supply operations. We</p> <p>10 produced various metal formed parts, but it was a</p> <p>11 privately owned business and it had a variety of other</p> <p>12 interests as well including real estate and retail</p> <p>13 along with a few other very minor businesses.</p> <p>14 Q. Just so we get a sense for the size of business, what</p> <p>15 were the annual revenues in general terms of Horizon</p> <p>16 Technology?</p> <p>17 A. Approximately \$60 million per year.</p> <p>18 Q. Thank you. And how long were you with Horizon</p> <p>19 Technology?</p> <p>20 A. Just under two years.</p> <p>21 Q. So if you were with Deloitte and Touche for</p> <p>22 five-and-a-half years, you left Deloitte in Touche in</p> <p>23 or around 1999 or year 2000; is that correct?</p> <p>24 A. Very beginning of year 2000, yes, sir.</p> <p>25 Q. And you were with Horizon Technology until when?</p>	<p>Page 16</p> <p>1 improvement, restructuring, crisis management,</p> <p>2 litigation support and investment banking.</p> <p>3 Q. Before your work for the City of Detroit did you have</p> <p>4 any experience working with governmental clients?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Approximately how many?</p> <p>7 A. Approximately five.</p> <p>8 Q. Can you identify them?</p> <p>9 A. Yes, sir. Detroit Public Schools, Jefferson County</p> <p>10 Alabama, Wayne County Circuit Court, others are</p> <p>11 slipping my mind right now -- oh, the Commonwealth of</p> <p>12 Puerto Rico and I'm -- those are the ones that I can</p> <p>13 recall at this point.</p> <p>14 Q. And that's fine. If you remember any others in the</p> <p>15 course of today's proceeding, I would ask that you</p> <p>16 identify them then.</p> <p>17 A. I will.</p> <p>18 Q. When did you do the work with the Detroit Public</p> <p>19 Schools?</p> <p>20 A. In 2011.</p> <p>21 Q. Is that work ongoing or is it completed?</p> <p>22 A. No, sir, it's completed.</p> <p>23 Q. And so how long did you do work for the Detroit Public</p> <p>24 Schools?</p> <p>25 A. Approximately three months.</p>

<p>Page 17</p> <p>1 Q. And what generally did you do for the Detroit Public 2 Schools? 3 A. We worked under then Emergency Manager Robert Bobb 4 looking at operational improvements including shared 5 services as well as outsourcing of certain operations. 6 Q. What about Jefferson County Alabama, when did you do 7 the work for that county? 8 A. In 2012 into 2013. 9 Q. And how long did you work with Jefferson County 10 Alabama? 11 A. That engagement, while somewhat dormant right now, is 12 still active, so approximately a year. 13 Q. And what -- was Conway MacKenzie engaged by Jefferson 14 County Alabama? 15 A. No, we were specifically engaged by one of the 16 monoline insurers through counsel. 17 Q. And which insurer was that? 18 A. National. 19 Q. And what did -- I understand it may be ongoing to some 20 extent or perhaps suspended now, but what work has 21 Conway MacKenzie done for or in the Jefferson County 22 Alabama case? 23 A. We assisted National and counsel to National in the 24 evaluation of plans put together by the county and 25 negotiations related to the plan of adjustment.</p>	<p>Page 19</p> <p>1 Were any of these entities we've talked 2 about so far that you've done work with in the 3 governmental areas, the Detroit Public Schools, 4 Jefferson County Alabama, and Wayne County Circuit 5 Court, were any of them either in bankruptcy or 6 reorganization or rehabilitation? 7 A. Yes, sir, Jefferson County was in Chapter 9 and 8 Detroit Public Schools were operating under an 9 Emergency Manager. And just to clarify there was a 10 time when while I was involved with Detroit Public 11 Schools that Mr. Robert Bobb was the Emergency 12 Financial Manager and there was a time where he was 13 the Emergency Manager. 14 Q. When you were working with Mr. Bobb for the Detroit 15 Public Schools, he was Emergency Manager or was he 16 also the Emergency Financial Manager or both? 17 A. When Conway MacKenzie was first engaged, Public Act 72 18 was in effect in Michigan and he was acting as the 19 Emergency Financial Manager. During the course of our 20 engagement, Public Act 4 came into existence and he 21 became the Emergency Manager. 22 Q. Thank you. 23 I believe the fourth governmental matter 24 you identified was Puerto Rico? 25 A. Yes, sir.</p>
<p>Page 18</p> <p>1 Q. Let's turn to Wayne County Circuit Court. 2 A. Yes, sir. 3 Q. What state is Wayne County is? 4 A. The State of Michigan. 5 Q. And when did you do work with Wayne County Circuit 6 Court? 7 A. I believe this was in 2005 or 2006. I can't recall 8 exactly. 9 Q. And approximately how long was the work for that 10 circuit court? 11 A. There were a couple of different assignments. I think 12 that the work extended over a period of perhaps six 13 months. 14 Q. And can you summarize for us what the work was -- 15 A. Our work -- 16 Q. -- that -- excuse me -- that your firm did? 17 A. Yes, our work revolved mainly around budget issues 18 that the court was having and providing analyses that 19 were used in negotiations between the court and Wayne 20 County. 21 Q. Was your firm's client the Wayne County Circuit Court? 22 A. Yes, sir. Just as -- Mr. Ruegger, just as a 23 clarification, Wayne County Circuit Court is also 24 known as 3rd Judicial Circuit Court of Michigan. 25 Q. Thank you.</p>	<p>Page 20</p> <p>1 Q. Who was Conway MacKenzie's client in the Puerto Rico 2 matter? 3 A. The Government Development Bank of Puerto Rico. 4 Q. Is that a publicly -- a public bank or a private bank? 5 A. It's a public bank. 6 Q. Under the control directly or indirectly of the 7 Commonwealth of Puerto Rico? 8 A. Yes, sir, it's a government agency. 9 Q. And when did you do the work for the Government 10 Development Bank? 11 A. I believe that was 2010. 12 Q. And for how long approximately? 13 A. Approximately three to four months. 14 Q. And what did you and your firm do for the Government 15 Development Bank? 16 A. Conway MacKenzie was engaged specifically related to 17 the employee retirement system for the Commonwealth of 18 Puerto Rico. 19 Q. Can you be somewhat more specific then about the 20 employment retirement system and work you did related 21 to that? 22 A. We were asked to conduct an investigation and an 23 analysis of factors that influenced the unfunded 24 position of the employee retirement system. 25 Q. Did you complete your work in that regard?</p>



<p style="text-align: right;">Page 21</p> <p>1 A. Yes, sir.</p> <p>2 Q. And just so I'm clear, I apologize, it was the</p> <p>3 employment retirement system of the Government</p> <p>4 Development Bank that you did this work for?</p> <p>5 A. The Government Development Bank was the engaging</p> <p>6 entity. The pension system for which our work related</p> <p>7 was the employee retirement system.</p> <p>8 Q. For what entity or group?</p> <p>9 A. For the Commonwealth of Puerto Rico.</p> <p>10 Q. Thank you.</p> <p>11 A. It was a public pension plan. Mr. Ruegger, I'll just</p> <p>12 clarify as well that my firm did work -- other work</p> <p>13 related to the Commonwealth of Puerto Rico for a</p> <p>14 different client prior to the assignment where we</p> <p>15 worked for the government.</p> <p>16 Q. All right. Can you identify what that other client</p> <p>17 was?</p> <p>18 A. Yes. We were engaged by both AFSCME and UAW.</p> <p>19 Q. And what were you engaged to do for those unions?</p> <p>20 A. Assist in analysis related to a plan that the governor</p> <p>21 had prepared and analysis of the upcoming budget.</p> <p>22 Q. Do you remember approximately when that work was done?</p> <p>23 A. I believe that may have been in 2009.</p> <p>24 Q. And how long did you work in the engagement for those</p> <p>25 two unions?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Yes, sir.</p> <p>2 Q. Anything other than seminars and conferences and what</p> <p>3 you've mentioned already?</p> <p>4 A. Over the course of my career I've also spent time with</p> <p>5 a few other certifications related to operational</p> <p>6 items; as an example, I don't believe it's called this</p> <p>7 anymore, but formerly the American Production</p> <p>8 Inventory Control Society, APICS, A-P-I-C-S. And I</p> <p>9 have been certified in certain operational information</p> <p>10 system applications used by businesses.</p> <p>11 Q. Can you identify any of the operational information</p> <p>12 system applications that you just mentioned?</p> <p>13 A. Yes, I have multiple certifications from QAD is the</p> <p>14 name of the company related to its software enterprise</p> <p>15 resource planning application known as MFG Pro.</p> <p>16 Q. Any others you can recall right now?</p> <p>17 A. No, I think that's it.</p> <p>18 Q. We're going to come back to the declaration in a</p> <p>19 second, but have you ever testified under oath before,</p> <p>20 Mr. Moore?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Approximately how many times?</p> <p>23 A. If you count testifying in the same matter multiple</p> <p>24 times as each individual instance, it would be perhaps</p> <p>25 15 -- 10 to 15 I think would be a fair number.</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Approximately two months, if I recall correctly.</p> <p>2 Q. It's set out in your declaration that -- and I believe</p> <p>3 it's paragraph 6 --</p> <p>4 (Discussion held off the record.)</p> <p>5 Q. -- that you're a Certified Public Accountant. That's</p> <p>6 accurate; correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And you are also a certified turnaround professional?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you have any other formal certificates?</p> <p>11 A. I am also, as is listed here, certified in financial</p> <p>12 forensics.</p> <p>13 Q. Any others that you recall?</p> <p>14 A. No, sir.</p> <p>15 Q. Other than -- any other formal training that you've</p> <p>16 had or certifications?</p> <p>17 A. Can you define formal training?</p> <p>18 Q. Sure. We'll try to break it down. How about any</p> <p>19 other classroom training or work at an educational</p> <p>20 institution?</p> <p>21 A. Through the course of my certifications as well as</p> <p>22 professional organizations to which I belong I</p> <p>23 regularly attend educational sessions every year.</p> <p>24 Q. So seminars, conferences, those kind of things you</p> <p>25 attend on a regular basis?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And of the 10 to 15 how many were in court?</p> <p>2 A. I've testified in court perhaps five to eight times.</p> <p>3 Q. Any instances where you testified in an arbitration</p> <p>4 proceeding?</p> <p>5 A. Not that I can recall.</p> <p>6 Q. And approximately how many of those instances were</p> <p>7 deposition testimony?</p> <p>8 A. I have been deposed approximately five times.</p> <p>9 Q. Other than the court and the deposition instances,</p> <p>10 have you testified under oath in any other context?</p> <p>11 A. Not that I can recall.</p> <p>12 Q. I'm going to ask you to identify for us the cases that</p> <p>13 you've testified -- in which you've testified, so</p> <p>14 let's start with the instances in court. When was the</p> <p>15 first time you testified in court?</p> <p>16 A. The matter would have been DCT, Inc., and I believe I</p> <p>17 testified in 2002.</p> <p>18 Q. Were you a fact or an expert witness?</p> <p>19 A. I was a fact witness.</p> <p>20 Q. And what issues did you testify to?</p> <p>21 A. This goes back 11 years so I'm stretching my memory</p> <p>22 here.</p> <p>23 Q. Just do the best you can, sir.</p> <p>24 A. But this was an involuntary bankruptcy filing where</p> <p>25 Conway MacKenzie was engaged on behalf of the debtor</p>



<p>Page 25</p> <p>1 and I believe that I was testifying to certain events 2 leading up to the involuntary bankruptcy filing. 3 Q. Was there -- was the filing contested by creditors or 4 any other group? 5 A. It was an involuntary bankruptcy filing. 6 Q. So -- very well. 7 How many times did you testify in the DCT 8 case? 9 A. Once. 10 Q. Did you testify in that case in deposition at all? 11 A. No, sir. 12 Q. Just the one instance of court testimony? 13 A. Yes. 14 Q. When was the next time you testified in court? 15 A. I believe that was 2003. 16 Q. Can you tell us the name of the case? 17 A. The name of the case was Wohlert Corporation. 18 Q. Can you spell that, please? 19 A. W-O-H-L-E-R-T. 20 Q. And were you a fact or expert witness? 21 A. I was a fact witness. 22 Q. And who was your -- were you -- who was 23 Conway MacKenzie's client in that case? 24 A. Conway MacKenzie was engaged by Wohlert Corporation. 25 Wohlert Corporation had filed Chapter 11.</p>	<p>Page 27</p> <p>1 transaction? 2 A. Yes, sir. 3 Q. Any other court cases you testified -- where you 4 testified in court other than the three you've 5 mentioned? 6 A. Yes, sir. Greektown Casino and Hotel. 7 Q. And who was Conway MacKenzie's client in that case? 8 A. Greektown Casino. 9 Q. And what issues did you address in your testimony? 10 A. I testified multiple times during that Chapter 11 case 11 related to postpetition financing, plans of 12 reorganization, disclosure statements, and a variety 13 of other issues. There were many instances of 14 testimony in that case. 15 Q. So when you say -- you said multiple or many, can you 16 give me an approximate number of times you testified 17 in court in that case? 18 A. Perhaps five or six. 19 Q. Thank you. 20 Other than the four cases we've identified 21 so far, have you testified in court in any other 22 instance? 23 A. Not that I can recall right now. 24 Q. Fair enough. 25 I believe you said you testified in</p>
<p>Page 26</p> <p>1 Q. And what court did Wohlert file for Chapter 11? 2 A. The Western District of Michigan. 3 Q. And what issues did you address in your testimony? 4 A. I testified multiple times for different issues in the 5 case. There was a motion to convert the case to 6 Chapter 7 that was filed, I testified related to 7 postpetition financing, I testified related to a sale 8 transaction, I believe. 9 Q. In each instance there was a separate incident of 10 testimony in court? 11 A. Yes, sir. 12 Q. Any other cases where you testified in court other 13 than the two you've mentioned? 14 A. Yes, sir. The next matter was Hastings Manufacturing 15 and that was a Chapter 11 in the Western District of 16 Michigan. 17 Q. And who was Conway MacKenzie's client there? 18 A. Hastings Manufacturing. 19 Q. And what issues did you address in your testimony? 20 A. I believe that I testified -- I'm just skipping my 21 mind on the specific testimony, but I think I 22 testified related to a sale transaction that was 23 occurring and this would have been in perhaps 2005 -- 24 2005 or 2006. 25 Q. So you testified in support of a proposed sale</p>	<p>Page 28</p> <p>1 deposition approximately five times? 2 A. Yes, sir. 3 Q. Were any of those depositions in the four court cases 4 that you've identified so far? 5 A. Yes, sir. 6 Q. In which of the cases that you identified so far have 7 you also testified in a deposition? 8 A. Greektown Casino. 9 Q. And approximately how many times were you deposed in 10 Greektown Casino? 11 A. At least two. 12 Q. Related to the same issues that you had mentioned 13 earlier that you testified to in court? 14 A. Yes, sir. 15 Q. Other than the depositions in the Greektown Casino 16 case can you give us the names and subject matters of 17 any -- of other cases where you were -- testified in a 18 deposition? 19 A. Yes, sir. Synergy Data, which was a Chapter 11 case 20 in the district of Delaware, and I don't believe, 21 Mr. Ruegger, that I testified in court in that 22 instance; however, I was deposed. I can't recall 23 exactly if I testified in court in that one or not. 24 Q. Do you remember what issues you addressed when you 25 testified in the Synergy Data case?</p>



<p style="text-align: right;">Page 29</p> <p>1 A. The issue related to a matter that was being litigated 2 between a creditor of Synergy Data and the estate. I 3 was the chief operating -- or chief restructuring 4 officer for the estate and then I became the 5 liquidating trustee. 6 Q. And what was the issue that was being litigated? 7 A. It was a dispute over amounts owed. 8 Q. Okay. Any other cases that you recall where you 9 testified in a deposition? 10 A. Yes, there was a case, this would have been in 2012, 11 it was General Motors Corporation versus Weber 12 Automotive, W-E-B-E-R. 13 Q. Who was Conway MacKenzie's client in that matter? 14 A. Counsel for General Motors. 15 Q. And what was the subject matter of your testimony? 16 A. This was a commercial dispute. 17 Q. Can you give us just a general description of what the 18 dispute related to? 19 A. Related to contractual terms, potential breach or 20 alleged breach of contract between the two parties. 21 Q. Was your testimony as an expert in the GM versus Weber 22 Automotive or as a fact witness? 23 A. As an expert. 24 Q. And do you recall what your -- what areas of expert 25 testimony you gave -- withdrawn.</p>	<p style="text-align: right;">Page 31</p> <p>1 the Greektown Casino debtor? 2 A. Yes, sir. 3 Q. And was that in the Delaware bankruptcy court or some 4 other court? 5 A. That was Eastern District of Michigan. 6 Q. Thank you. 7 And do you recall the year or years where 8 the Greektown Casino bankruptcy was pending? 9 A. 2008 through 2010. 10 Q. Am I correct then that -- withdrawn. 11 Other than the GM V. Weber Automotive and 12 the Greektown Casino cases, have you testified as an 13 expert in any other cases? 14 A. Not that I can recall. 15 Q. Have you submitted an expert report in any other 16 cases? 17 A. Yes, sir. 18 Q. How many other cases? 19 A. Off the top of my head, approximately perhaps two. 20 Q. And are these instances where you signed the expert 21 report as the head of the Conway MacKenzie team? 22 A. Yes, sir. 23 Q. In which two matters did you submit those expert 24 reports? 25 A. One matter would be MuniVest.</p>
<p style="text-align: right;">Page 30</p> <p>1 What were you -- what subjects were you an 2 expert on in that case? 3 A. I was an expert related to the automotive industry and 4 supplier relations. 5 Q. Back to the subject of what deposition testimony 6 you've given. Other than the cases you've identified 7 so far, have you testified in a deposition in any 8 other case? 9 A. Not that I can recall. I think that takes us to about 10 five or so, which is what I thought I had done before 11 in depositions. 12 Q. Thank you. 13 You mentioned that you testified as an 14 expert in the GM versus Weber Automotive matter and 15 have you testified as an expert in any other matter? 16 A. I testified as an expert in the Greektown case. 17 Q. And on what subjects were you proffered as an expert 18 in the Greektown Casino case? 19 A. Plan confirmation. 20 Q. Did you have a position or a title with the Greektown 21 Casino case? 22 A. I believe the title was either restructuring advisor 23 or chief restructuring advisor. I was specifically 24 named as this individual. 25 Q. And did -- was a plan of reorganization confirmed for</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. And can you tell us what that matter is or was? 2 A. That was an alleged Ponzi scheme and I worked on 3 behalf of the trustee that was appointed in that case. 4 Q. And where was that case pending? 5 A. That was Eastern District of Michigan. 6 Q. And I take it the subject of your testimony -- or the 7 subject of your report was whether in fact there was a 8 Ponzi scheme? 9 A. Yes, sir. 10 Q. Did you conclude that there was a Ponzi scheme? 11 A. Yes, sir. 12 Q. And you never testified, though, in that case, either 13 in deposition or in court? 14 A. Not yet. 15 Q. It's pending? 16 A. There are still open issues, many -- many matters have 17 settled, but the case is still open. 18 Q. And the second instance where you've submitted a 19 report, can you describe that case for us, please? 20 A. I don't believe that this was a signed report and I am 21 actually forgetting the official name of the case but 22 this was a -- the general name of the matter was 23 ConTech, C-O-N-T-E-C-H, and this involved preference 24 litigation. 25 Q. Who is the client in the ConTech matter?</p>



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<p style="text-align: right;">Page 37</p> <p>1 second.</p> <p>2 (A brief recess was taken.)</p> <p>3 MR. RUEGGER: Back on the record.</p> <p>4 Drew, you want to say something?</p> <p>5 MR. MAST: Yes, before we continue, just</p> <p>6 briefly, I would like to make a statement on behalf of</p> <p>7 the Retirement Systems that as to any and all</p> <p>8 questioning by others today regarding pension and</p> <p>9 actuarial issues, including underfunding, calculations</p> <p>10 and assumptions, Detroit -- the Retirement Systems are</p> <p>11 not participating today and reserve all rights with</p> <p>12 regard to those issues. That's all.</p> <p>13 MR. RUEGGER: Very well.</p> <p>14 BY MR. RUEGGER:</p> <p>15 Q. We were talking about the commission that was</p> <p>16 referenced in your declaration when we left.</p> <p>17 A. Yes, sir.</p> <p>18 Q. What was the subject matter of that commission as you</p> <p>19 recall?</p> <p>20 A. The commission was created as part of a budget</p> <p>21 standoff that took place within the State of Michigan</p> <p>22 prior to the start of its fiscal year 2008. The State</p> <p>23 was not able to pass a balanced budget prior to the</p> <p>24 start of the fiscal year on October 1st, 2007. As</p> <p>25 part of the final compromise, there was the -- to be</p>	<p style="text-align: right;">Page 39</p> <p>1 on Government Efficiency have you served on any State</p> <p>2 commissions?</p> <p>3 A. No, sir.</p> <p>4 (Marked Exhibit No. 2.)</p> <p>5 Q. I want to try to explore what you know about some</p> <p>6 other references to various teams or panels that are</p> <p>7 in the pleadings so -- because we're on the subject of</p> <p>8 commissions now and I've asked the court reporter to</p> <p>9 mark as Moore Exhibit 2 a copy of the Memorandum in</p> <p>10 Support of Statement of Qualifications Pursuant to</p> <p>11 Section 109(c) of the Bankruptcy Code, which was filed</p> <p>12 July 18th, 2013.</p> <p>13 MR. RUEGGER: And if anybody wants to look</p> <p>14 at a copy.</p> <p>15 Q. I'm not going to spend a lot of time on this, but if</p> <p>16 you could, Mr. Moore, turn to page 1 of that document.</p> <p>17 You can certainly review it to be familiar if you</p> <p>18 want. You have that page, sir?</p> <p>19 A. Yes, sir.</p> <p>20 Q. You'll notice in the first line under the introduction</p> <p>21 it says -- there's a reference to a State appointed</p> <p>22 "financial review team." Do you know what that</p> <p>23 reference is to?</p> <p>24 A. Yes.</p> <p>25 Q. What is the financial review team that's referenced</p>
<p style="text-align: right;">Page 38</p> <p>1 the creation of a commission called the Legislative</p> <p>2 Commission on Government Efficiency which would</p> <p>3 consist of nine members that would look for</p> <p>4 efficiencies in the State of Michigan's operations.</p> <p>5 Q. And did that commission issue a report or</p> <p>6 recommendation?</p> <p>7 A. Yes, sir.</p> <p>8 Q. At the end of that two-year period?</p> <p>9 A. Yes.</p> <p>10 Q. Who was the speaker who appointed -- you mentioned the</p> <p>11 speaker and the house majority leader both appointed</p> <p>12 you to that commission?</p> <p>13 A. Speaker of the house was Andy Dillon and the senate</p> <p>14 majority leader was Mike Bishop.</p> <p>15 Q. Last name, sir?</p> <p>16 A. Bishop.</p> <p>17 Q. Bishop?</p> <p>18 A. Bishop, B-I-S-H-O-P.</p> <p>19 Q. Prior to the Legislative Commission on Government</p> <p>20 Efficiency, had you served on any commissions or other</p> <p>21 organizations on behalf of the government?</p> <p>22 A. The State government?</p> <p>23 Q. Yes, sir.</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Subsequent to your work on the Legislative Commission</p>	<p style="text-align: right;">Page 40</p> <p>1 there?</p> <p>2 A. This refers to, I believe, without going through the</p> <p>3 entire document, the review team that was appointed by</p> <p>4 the State to conduct a review of the City of Detroit's</p> <p>5 finances to determine if an emergency exists.</p> <p>6 Q. Were you part of this financial review team that's</p> <p>7 referenced here?</p> <p>8 A. No.</p> <p>9 Q. Do you know who was on that financial review team?</p> <p>10 A. I seem to recall a couple of the members, but I don't</p> <p>11 know all of the people that were on the review team.</p> <p>12 Q. Fair enough. Can you just identify those that you do</p> <p>13 remember?</p> <p>14 A. Fred Headen and Darrell Burks.</p> <p>15 Q. Did this State appointed financial review team issue a</p> <p>16 report or recommendation in writing?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And when was that issued?</p> <p>19 A. I don't recall the exact date.</p> <p>20 Q. Was it 2013?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Mr. Orr testified in deposition two days ago and he</p> <p>23 mentioned that as part of the engagement process his</p> <p>24 firm at the time Jones Day appeared before what I</p> <p>25 believe the reference -- his -- he called a</p>



<p style="text-align: right;">Page 41</p> <p>1 restructuring team of advisors for the City of 2 New York? 3 MS. LEVINE: City of Detroit? 4 MR. RUEGGER: City of Detroit, excuse me, 5 thank you. 6 Q. Were you part of any team that entertained pitches 7 from law firms as the potential counsel to the City of 8 Detroit? 9 MR. MILLER: Object to form. 10 A. I participated in a day long session where 11 representatives of the City met with some law firms at 12 Metro Airport. 13 Q. Do you remember approximately when that occurred? 14 A. I believe it was the end of January of 2013. 15 Q. And who else participated with you and the 16 representatives of the City of Detroit on that day? 17 MR. MILLER: Object to form. 18 A. From the standpoint of who were the people that were 19 meeting with the law firms? 20 Q. Yeah, putting aside the various law firm people who 21 were appearing, but who on behalf of the City or in 22 coordination with the City were there and heard from 23 the law firms? 24 A. From the City there was Jack Martin and Kriss Andrews. 25 I can't recall if there was anyone else there that was</p>	<p style="text-align: right;">Page 43</p> <p>1 this case? 2 MR. MILLER: Let me answer. I don't know. 3 MR. RUEGGER: Okay. 4 MR. MILLER: And if you would like, just 5 email me and we'll confirm one way or the other. 6 MR. RUEGGER: Before we trouble you we'll 7 try to see if we can find it in the data room. 8 MR. MILLER: Okay. 9 MR. RUEGGER: But thank you. 10 Q. Had Conway MacKenzie been engaged by the City in any 11 role prior to the January contract with the City that 12 we just referenced? 13 A. Not engaged, but Conway MacKenzie did do some pro bono 14 work for the City during 2012. 15 Q. And what was the nature of that work in 2012? 16 A. We assisted with a review and assessment of five areas 17 that involved cashiering operations to identify 18 recommendations for improvement. 19 Q. And were these cashiering operations citywide or in 20 one specific geographic or operational area? 21 MR. MILLER: Object to form. 22 A. They were in specific operational areas. 23 Q. And which specific operational areas were those? 24 A. If I recall correctly, there was parking, building 25 safety engineering and environmental department. I'm</p>
<p style="text-align: right;">Page 42</p> <p>1 an employee of the City of Detroit. And then there 2 were representatives from Miller Buckfire, Ernst & 3 Young and the State of Michigan. 4 Q. Do you remember who was there from Miller Buckfire? 5 A. Ken Buckfire, I believe Kyle Herman. 6 Q. Anyone else? 7 A. I don't recall if there was anyone else. 8 Q. Who was there from E&Y? 9 A. Gaurav Malhotra. 10 Q. Anyone else? 11 A. Not that I recall. 12 Q. And from the State? 13 A. Andy Dillon, Rich Baird, Brom Stibitz. I can't recall 14 if there was anyone else there from the State. 15 Q. At the time of the meetings at the airport, had 16 Conway MacKenzie been engaged by the City of New -- of 17 Detroit? 18 A. Yes, sir. 19 Q. Was that pursuant to an engagement letter or 20 agreement? 21 A. It was pursuant to a contract that was approved by 22 city council and then executed by the City. 23 Q. Do you happen to know -- this may be a question better 24 addressed to counsel that may not be here, but do you 25 know whether that contract is part of the data room in</p>	<p style="text-align: right;">Page 44</p> <p>1 blanking on the other three areas, but they were 2 specific -- or department specific. 3 Q. Has Conway MacKenzie ever been engaged by the State to 4 do work on a State matter, State of Michigan I mean? 5 A. Not that I'm aware of. Obviously I've been with the 6 firm for only 12 years, the firm's been around 26 7 years so I can't say before my time. During my time I 8 don't believe that is the case. 9 Q. So to the best of your understanding the first 10 engagement for Conway MacKenzie for either the State 11 or the city other than the pro bono work you 12 referenced was the contract that's currently in effect 13 for the City of Detroit that was signed in or around 14 January of 2013; is that correct? 15 A. Yes, sir. 16 MS. LEVINE: Good question. 17 MR. RUEGGER: Sometimes it gets a little 18 carried away. 19 Q. Were you involved in the discussions with the City 20 that predated the Conway MacKenzie engagement? 21 MR. MILLER: Object to form. 22 A. Can you be more specific about the conversations? 23 Q. I'll try, I'll try. 24 Were there discussions between 25 Conway MacKenzie and the City of Detroit</p>

<p>Page 45</p> <p>1 representatives related to the potential engagement of 2 Conway MacKenzie prior to the actual contract being 3 executed? 4 A. Yes, sir. 5 Q. When approximately did those contacts commence? 6 A. Well, there was an RFP that went out in November -- I 7 think it was in November of 2012 that Conway MacKenzie 8 responded to and there were multiple meetings and 9 multiple correspondence with the City related to our 10 RFP response. Prior to that RFP there were 11 discussions that took place with the City regarding 12 potential ways that Conway MacKenzie could assist the 13 City. 14 Q. So there were communications prior to the RFP going 15 out? 16 A. Yes, sir. 17 Q. Who initiated those to the best of your recollection? 18 A. Probably our firm and probably me. 19 Q. And who at the City did you contact? 20 A. I spoke with Kriss Andrews. 21 Q. Did you know Mr. Andrews previously? 22 A. Yes, sir. 23 Q. How did you first meet Mr. Andrews? 24 A. In the restructuring business when he was with his 25 previous firm.</p>	<p>Page 47</p> <p>1 A. Yes, sir. 2 Q. How did you become familiar with that agreement? 3 A. That is a public document that I reviewed after it was 4 executed. 5 Q. So you just went into the public records to pull it 6 up? 7 A. Yes, sir. 8 Q. In addition to the advice you offered Mr. Andrews in 9 that first conversation -- was this on the phone? 10 A. I believe that I had phone conversations with Kriss. 11 Prior to him starting with the City I took him to 12 breakfast to share some ideas with him and then as 13 part of the cashiering work that we were doing, there 14 may have been times that I provided a comment here or 15 there while we were at the City. 16 Q. Approximately how many times did you speak with 17 Mr. Andrews before the RFP was issued? 18 A. Related to the cashiering work or in total? 19 Q. In any context. 20 A. Very hard for me to say. 21 Q. The cashiering work that Conway MacKenzie did for the 22 city spanned what time period? 23 A. Approximately September of 2012 until November of 24 2012. 25 Q. Approximately how many conversations either in person</p>
<p>Page 46</p> <p>1 Q. And what was his previous firm? 2 A. BBK. 3 Q. And do you recall what matter you first met 4 Mr. Andrews related to? 5 A. No, I don't. 6 Q. And can you tell us in summary what you said to 7 Mr. Andrews and what he said to you in that first 8 conversation? 9 A. I reached out to Kriss when his appointment as program 10 manager director was made public to offer advice and 11 to share with him some ideas about issues that he 12 would be heading into with the City. 13 Q. And what advice did you offer Mr. Andrews? 14 A. One item that I had put out to him is a segregation of 15 the operating initiatives that were contained within 16 the financial stability agreement into different 17 categories and some potential approaches to those 18 categories. 19 Q. What was the financial stability agreement that you 20 just mentioned? 21 A. The financial stability agreement is sometimes 22 referred to by people as the consent agreement that 23 was entered into between the State of Michigan and the 24 City of Detroit around the beginning of April of 2012. 25 Q. And you are familiar with that consent agreement?</p>	<p>Page 48</p> <p>1 or on the phone did you have with Mr. Andrews related 2 to issues other than the cashiering work? 3 MR. MILLER: Object to form. 4 A. Maybe three or four. 5 Q. Appearing these three or four were all before the RFP 6 was issued? 7 A. Yes, sir. 8 Q. During that period of time, again prior to the RFP 9 being issued, did you have any conversations with any 10 other representatives of the City relating to 11 potential Conway MacKenzie work for the City? 12 A. One of my partners and a cofounder of the firm, 13 Van Conway, had a conversation with Mayor Bing at some 14 point prior to the financial stability agreement being 15 executed and Van Conway and I had a meeting with 16 Kirk Lewis when he was deputy mayor. 17 Q. Other than the meeting with Mr. Lewis and Mr. Conway's 18 conversation with Mayor Bing, did anyone from your 19 firm have any contacts with City representatives to 20 your knowledge related to potential Conway MacKenzie 21 work for the City before the RFP was issued? 22 A. Not that I'm aware of. 23 Q. Approximately how many Conway MacKenzie professionals 24 have worked on -- related to the contract between 25 Conway MacKenzie and the City that was executed in</p>



<p>Page 49</p> <p>1 January?</p> <p>2 A. Approximately 13.</p> <p>3 Q. And are you the lead for that effort?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Can you describe generally what Conway MacKenzie's</p> <p>6 done in connection with its -- withdrawn.</p> <p>7 Starting in -- withdrawn.</p> <p>8 Is it correct that Conway MacKenzie's work</p> <p>9 for the City started in January of 2013?</p> <p>10 A. Under the contract that we previously discussed, yes,</p> <p>11 sir.</p> <p>12 Q. Yes. Okay. And can you describe generally what</p> <p>13 Conway MacKenzie did over the first three to four</p> <p>14 months of that work?</p> <p>15 A. Yes, sir. Conway MacKenzie is the operational</p> <p>16 restructuring advisor to the City of Detroit. The</p> <p>17 first 90 days we spent going through the majority of</p> <p>18 the departments of the City to identify the</p> <p>19 deficiencies in those departments and to put together</p> <p>20 an operational improvement plan.</p> <p>21 Q. And did Conway MacKenzie prepare that operational</p> <p>22 improvement plan?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And approximately when was that plan finished?</p> <p>25 A. June 14th.</p>	<p>Page 51</p> <p>1 in preparing?</p> <p>2 MR. MILLER: It's a large document. Do you</p> <p>3 want him to go through it?</p> <p>4 MR. RUEGGER: Well, I don't need to have</p> <p>5 him go through every page or even every section, but</p> <p>6 he could actually just look at the table of contents</p> <p>7 and probably give me enough of a sense.</p> <p>8 MR. MILLER: Why don't you spend some time</p> <p>9 looking at the document?</p> <p>10 A. Mr. Ruegger, if I recall correctly, Conway MacKenzie</p> <p>11 provided information that was used in the first</p> <p>12 section, Detroit faces strong economic headwinds. I</p> <p>13 believe that we would have provided comments under the</p> <p>14 key objectives for financial restructuring and</p> <p>15 rehabilitation of Detroit. The restructuring and</p> <p>16 reinvesting in city government. And then the ten-year</p> <p>17 projections.</p> <p>18 Q. Of the four topics that you just mentioned, did</p> <p>19 Conway MacKenzie prepare the original draft of any of</p> <p>20 those sections or were those sections prepared by some</p> <p>21 other group or entity and your group -- your firm gave</p> <p>22 comments to that prior form?</p> <p>23 MR. MILLER: Object to form.</p> <p>24 A. If I recall correctly, we provided comments to a</p> <p>25 document that was already started.</p>
<p>Page 50</p> <p>1 MR. RUEGGER: I'm going to ask the court</p> <p>2 reporter to mark as Moore Exhibit 3 the City of</p> <p>3 Detroit proposal for creditors dated June 14th, 2013.</p> <p>4 (Marked Exhibit No. 3.)</p> <p>5 Q. The first page of it is titled Exhibit C, because I</p> <p>6 believe it was an exhibit to a court filing.</p> <p>7 Do you recognize either the document or</p> <p>8 some portion of that document, Mr. Moore?</p> <p>9 A. This appears to be the document that was handed out at</p> <p>10 the June 14th meeting of the creditors, June 14th of</p> <p>11 2013.</p> <p>12 Q. Okay. Did you have -- withdrawn.</p> <p>13 Did you and/or Conway MacKenzie have any</p> <p>14 role in the preparation of this document?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Can you describe generally what that role was?</p> <p>17 A. We provided assistance with various information</p> <p>18 included in the body of the document and then the</p> <p>19 creation of the restructuring and reinvestment</p> <p>20 initiatives that are included in the ten-year</p> <p>21 projection.</p> <p>22 Q. So and can you be more specific? I mean, I understand</p> <p>23 the ten-year projections are at page 90 from the table</p> <p>24 of contents, but can you be more specific about what</p> <p>25 portions of this document Conway MacKenzie had a role</p>	<p>Page 52</p> <p>1 Q. Who started that document, if you know?</p> <p>2 A. We provided comments to counsel.</p> <p>3 Q. Counsel being Jones Day?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Turning to the ten-year projections, which is page 90,</p> <p>6 do you have that page, sir? I'm sorry.</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you know where the figures on this page came from?</p> <p>9 A. I believe that these were prepared by Ernst & Young.</p> <p>10 Q. And you'll see there's a reference in the</p> <p>11 parenthetical there saying general fund only. How</p> <p>12 many separate funds exist within the City of Detroit</p> <p>13 if you know?</p> <p>14 A. I don't know the exact number offhand, but the general</p> <p>15 fund, as you can see, revenue wise is between a</p> <p>16 billion and a billion one. Total revenue across all</p> <p>17 funds for the City is about two and a half billion.</p> <p>18 Q. So you've got about another billion and a half in</p> <p>19 other funds in the City?</p> <p>20 A. Yes.</p> <p>21 Q. And you said you did not know the specific number of</p> <p>22 other funds. Do you have a general understanding as</p> <p>23 to the number of other funds?</p> <p>24 A. If we're talking about enterprise funds, I think that</p> <p>25 there are maybe five other enterprise funds.</p>

<p>Page 53</p> <p>1 Q. And what about not enterprise funds?</p> <p>2 A. Other agencies, under five.</p> <p>3 Q. I've read somewhere, and I've been wrong many times,</p> <p>4 but I've read somewhere that there are quite a number</p> <p>5 of agencies within the City of Detroit government. Do</p> <p>6 you have an understanding of how many different</p> <p>7 agencies the City of Detroit currently has?</p> <p>8 MR. MILLER: Object to form.</p> <p>9 MR. RUEGGER: Well, okay, I'll try it</p> <p>10 again.</p> <p>11 Q. How many agencies within the City of Detroit</p> <p>12 government to your knowledge?</p> <p>13 A. I don't know the exact number.</p> <p>14 Q. Is it more than 40?</p> <p>15 A. That seems very high to me.</p> <p>16 Q. Do you know whether each agency within the City of</p> <p>17 Detroit has its own fund?</p> <p>18 MR. MILLER: Object to form.</p> <p>19 A. I don't believe that it does.</p> <p>20 Q. On the same subject you mentioned that the general</p> <p>21 fund has approximately a billion dollars in total</p> <p>22 revenues --</p> <p>23 A. Yes, sir.</p> <p>24 Q. -- right? And your testimony will speak for itself.</p> <p>25 You thought there might be another billion and a half</p>	<p>Page 55</p> <p>1 attended.</p> <p>2 Q. All right. What groups did you understand were</p> <p>3 attending?</p> <p>4 A. My understanding is that representatives of all the</p> <p>5 unions were invited, representatives of other</p> <p>6 creditors, monoline insurers, I believe the pension</p> <p>7 funds, possibly retiree associations. I'm not sure if</p> <p>8 there were any other groups.</p> <p>9 Q. And there were representatives of the City there too?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Who attended on behalf of the City either as their</p> <p>12 advisors or as employees of the City?</p> <p>13 A. Mr. Orr was there, the Emergency Manager. Jack</p> <p>14 Martin, the CFO. The City's restructuring advisors</p> <p>15 including counsel, so that would be representatives of</p> <p>16 Jones Day, Conway MacKenzie, Miller Buckfire, Ernst &</p> <p>17 Young. I'm not sure if anyone else was there on</p> <p>18 behalf of the City.</p> <p>19 Q. Did you speak at the meeting?</p> <p>20 A. Yes, sir.</p> <p>21 Q. What subjects did you address in your comments?</p> <p>22 A. I can't recall offhand which pages I covered.</p> <p>23 Q. Do you recall generally what your responsibility was</p> <p>24 at that meeting?</p> <p>25 A. I think generally I was to cover some of the issues</p>
<p>Page 54</p> <p>1 of revenues that are outside the general fund, inside</p> <p>2 within the City of Detroit. Can you -- is that fair?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Can you describe where those other funds were?</p> <p>5 A. You have --</p> <p>6 MR. MILLER: Let me just object to form.</p> <p>7 Go ahead.</p> <p>8 A. You have the water and sewer department, Detroit</p> <p>9 department of transportation, public lighting</p> <p>10 department, parking. Those are the primary ones that</p> <p>11 come to mind.</p> <p>12 Q. Thank you.</p> <p>13 You mentioned earlier that you attended a</p> <p>14 meeting on around June 14th, 2013. Where was that</p> <p>15 meeting?</p> <p>16 A. The meeting I was referring to was -- I believe that</p> <p>17 you asked when we completed our plan, I indicated June</p> <p>18 14th. That is the date that there was a meeting of</p> <p>19 the creditors to present this proposal and that was</p> <p>20 held at Metro Airport.</p> <p>21 Q. As best you recall who attended that meeting? And if</p> <p>22 you don't know the individuals' names, if you could</p> <p>23 identify who they represented, that would be fine.</p> <p>24 A. Mr. Ruegger, there were about 200 people there so I</p> <p>25 certainly don't know the names of all the people that</p>	<p>Page 56</p> <p>1 that exist today and then the foundation of the</p> <p>2 restructuring initiatives.</p> <p>3 Q. Prior to the meeting on June 14th had you attended any</p> <p>4 meetings with creditors or unions of the City?</p> <p>5 A. In the course of our work we, we being</p> <p>6 Conway MacKenzie, would have met with employees of</p> <p>7 departments that are part of unions.</p> <p>8 Q. So as part of your investigation, you were talking to</p> <p>9 people who happened to be union members but working</p> <p>10 for the City?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Fair enough. Did you meet with any representatives of</p> <p>13 unions in that capacity during the period from January</p> <p>14 till June 14th?</p> <p>15 A. Can you be clearer when you say in that capacity?</p> <p>16 Q. Yes, you pointed out a distinction that's fair, that</p> <p>17 you met with union members but really as City</p> <p>18 employees, not in their union status. I'm now asking</p> <p>19 whether you met with the unions, for example, people</p> <p>20 who were there representing the union?</p> <p>21 A. Yes, sir.</p> <p>22 Q. In how many instances?</p> <p>23 MR. MILLER: This is still during the time</p> <p>24 period you had previously said?</p> <p>25 MR. RUEGGER: Yeah, January to June.</p>



<p>Page 57</p> <p>1 A. That would be hard for me to estimate. I myself 2 participated in meeting, members of my team 3 participated in a lot of meetings that I was not in, 4 so I don't know what that number would be. 5 Q. Do you recall what the purpose of those meetings was 6 or purposes of those meetings? 7 A. The meetings that I attended it was to understand from 8 the union standpoint some of the primary issues that 9 existed from an operational standpoint that they 10 wanted to see addressed. 11 Q. Did you meet with any representatives of any retiree 12 associations during that same period? 13 A. Not that I can recall. 14 Q. Subsequent to the June 14th meeting did you or others 15 at Conway MacKenzie to your knowledge meet with 16 representatives of unions for any purpose? 17 A. Yes, sir. 18 Q. Do you recall approximately how many times? 19 A. Again, it's very hard for me to estimate the total 20 number of meetings that would have taken place by the 21 entire team. 22 Q. And am I correct the subject matter of those meetings 23 would have been the proposals and other information 24 that's basically contained in what's been marked as -- 25 I believe it's Moore Exhibit 3?</p>	<p>Page 59</p> <p>1 A. These are due diligence sessions being undertaken by 2 creditor constituents where we would meet, discuss in 3 more detail the plan and hopefully share ideas as to 4 what people were thinking about the plan. 5 Q. I want to switch subjects now and turn to your 6 declaration again, which is Moore Exhibit 1. 7 If you could turn, sir, to paragraph 11, 8 which is on page 5. And you'll see the first sentence 9 in paragraph 11 reads, the combined reported UAAL for 10 the systems, however, is premised upon a host of 11 valuation assumptions and methods that in the City's 12 view serve to substantially understate the systems' 13 unfunded liabilities. 14 Do you see that sentence, sir? 15 A. I do. 16 Q. Can you identify what valuation assumptions and 17 methods you refer to in that sentence? 18 A. If you continue on in that paragraph, I mention the 19 assumed rate of return on the plan assets. 20 Q. That's one, yes, sir. 21 A. Yes. 22 Q. Any others? 23 A. Another is referred to in the next paragraph, 24 paragraph 12, which discusses the process of asset 25 smoothing and specifically over a seven-year period.</p>
<p>Page 58</p> <p>1 MR. MILLER: Object to form. 2 A. Yes, sir. 3 Q. Did you meet with any representatives of any retirees 4 associations or groups after the time of June 14th? 5 A. Yes, sir. 6 Q. Do you recall approximately how many times? 7 A. Well, beginning on June 20th there were meetings with 8 two different meetings held on June 20th that involved 9 retiree associations. 10 Q. And you attended those meetings? 11 A. Yes, sir. 12 Q. Other than those two meetings do you recall any other 13 meetings with retiree associations in the period after 14 June 14th? 15 A. Yes, there was -- there were meetings on July 10th 16 that I participated in where retiree associations were 17 represented. 18 Q. Any others? 19 A. I don't recall specifically. We -- from a due 20 diligence standpoint the number of meetings that took 21 place in the time period that you're referencing post 22 June 14th were substantial. 23 Q. When you say from a due diligence standpoint, was that 24 due diligence being undertaken by the retiree groups 25 or by Conway MacKenzie or by some other group?</p>	<p>Page 60</p> <p>1 Q. Any others? 2 A. Those are the only two that I've referenced here in 3 the declaration. In the course of determining the 4 UAAL or just the underfunded position of the pension, 5 there are a wide variety of assumptions and looking at 6 every one of those assumptions separately one could 7 make a determination as to whether that is 8 conservative, realistic or aggressive and there are 9 certainly, like I say, a number of other assumptions 10 that I did not get into in this document that 11 certainly could come into play with that sentence at 12 the beginning of paragraph 11. 13 Q. And it's those assumptions and methods that I would 14 like to discuss now. So other than the ones that you 15 address in the declaration, do you recall now any 16 other assumptions that you believe serve to 17 substantially understate the systems' unfunded 18 liabilities? 19 A. The underfunded calculations take into account 20 contributions that were supposed to have been made by 21 the City that were not actually made. 22 Q. And is that the subject that you address in paragraph 23 20 of your declaration? 24 A. Yes. 25 Q. Any others that come to mind?</p>



<p style="text-align: right;">Page 61</p> <p>1 A. The rate of payouts is another area where the</p> <p>2 actuaries make assumptions as to what benefits will be</p> <p>3 paid in what periods and to the extent that those are</p> <p>4 underestimated, that can impact the funded position as</p> <p>5 well. Tying into previous assumptions that I had</p> <p>6 indicated.</p> <p>7 Q. So is it -- is it your position that the City views</p> <p>8 the actuarial payout assumptions as understating</p> <p>9 unfunded liabilities?</p> <p>10 MR. MILLER: Object to form. Go ahead.</p> <p>11 A. As an example, Mr. Ruegger, the actuarial valuation</p> <p>12 assumes certain payouts. The actual payouts in the</p> <p>13 most recent completed year of plan assets were</p> <p>14 substantially higher than what was anticipated prior</p> <p>15 to that valuation being done and so at a minimum that</p> <p>16 would indicate that there were more assets that were</p> <p>17 paid out than what was assumed by the actuary.</p> <p>18 Q. Other than the assumptions and methods you've</p> <p>19 identified, are there any other assumptions and</p> <p>20 methods that to your understanding the City views as</p> <p>21 understating the systems' unfunded liabilities?</p> <p>22 A. The City and most importantly its actuary has not</p> <p>23 completed its analysis on the unfunded position. The</p> <p>24 City is trying to undertake a process to actually</p> <p>25 develop a more concrete valuation model on its own so</p>	<p style="text-align: right;">Page 63</p> <p>1 letters and reports and we'll take those up with the</p> <p>2 Milliman folks, but I'm trying now to focus on the 7.0</p> <p>3 figure. That was a figure selected by the City for</p> <p>4 illustrative purposes; correct?</p> <p>5 MR. MILLER: Object to form.</p> <p>6 A. Yes.</p> <p>7 Q. And that was not the specific figure or a specific</p> <p>8 figure recommended by Milliman or any other actuary;</p> <p>9 correct?</p> <p>10 A. I can't speak to any other actuary, but going back to</p> <p>11 the previous question, yes, 7 percent was used for</p> <p>12 illustrative purposes.</p> <p>13 Q. The -- and the Milliman analysis that's been</p> <p>14 undertaken so far, to your understanding, that hasn't</p> <p>15 been the product of work on the actual data for the</p> <p>16 systems; has it?</p> <p>17 MR. MILLER: Object to form.</p> <p>18 MR. RUEGGER: Okay, that was a poor</p> <p>19 question, I'll try again. Actually withdrawn.</p> <p>20 Q. Related to the projected net return, in paragraph 15</p> <p>21 of your declaration, I believe it's 15, you have a --</p> <p>22 we'll get to it.</p> <p>23 Let's talk now about the concept of</p> <p>24 smoothing that you reference in paragraph 12. In your</p> <p>25 understanding smoothing is a common calculation used</p>
<p style="text-align: right;">Page 62</p> <p>1 it's been relying on the valuation model of the</p> <p>2 pension systems' actuary. As such we have focused on</p> <p>3 a few items here, but until the City completes its</p> <p>4 analysis and completes its own actuarial valuation,</p> <p>5 neither the City nor its actuary nor I would be able</p> <p>6 to say what all the assumptions are that could be used</p> <p>7 to either overstate or understate the funded position.</p> <p>8 Q. Very well.</p> <p>9 Let's turn to one of the assumptions that</p> <p>10 you address in your declaration and specifically in</p> <p>11 paragraph 11 you talk about the projected net rate of</p> <p>12 return. The 7.0 percent or 7.25 percent figure, do</p> <p>13 you see that in paragraph 11?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Those were not figures that were recommended by a</p> <p>16 particular actuary; were they?</p> <p>17 A. The 7 percent is actually higher than the rate that</p> <p>18 Milliman, the City's actuary, had originally put</p> <p>19 forward, which in its view would result -- the rate at</p> <p>20 which there was a fifty-fifty chance of achieving that</p> <p>21 rate.</p> <p>22 MR. RUEGGER: All right. I'm going to move</p> <p>23 to strike, because with all respect that was not</p> <p>24 responsive to my question, Mr. Moore.</p> <p>25 Q. I understand Milliman has prepared a variety of</p>	<p style="text-align: right;">Page 64</p> <p>1 by actuaries related to pension projections; correct?</p> <p>2 A. I would clarify your question from the standpoint of</p> <p>3 typically pension boards will decide on the policies</p> <p>4 and then actuaries will perform calculations based on</p> <p>5 the policies that a board will decide to use.</p> <p>6 Q. But smoothing is a common practice for actuaries; is</p> <p>7 it not?</p> <p>8 MR. MILLER: Object to form.</p> <p>9 A. Based on my experience, yes, there is a number of</p> <p>10 plans that I've looked at that involve a smoothing.</p> <p>11 Q. And would you agree that smoothing is a method to</p> <p>12 manage the effect of investment volatility on</p> <p>13 contributions and to provide a more consistent measure</p> <p>14 of plan funding over time?</p> <p>15 MR. MILLER: Object to form.</p> <p>16 A. Generally speaking, yes. What's important to note is</p> <p>17 that smoothing is a concept, and I agree with the</p> <p>18 purpose of that concept. The number of years over</p> <p>19 which a pension system may smooth can differ</p> <p>20 significantly.</p> <p>21 Q. Based on the -- well, withdrawn.</p> <p>22 To your knowledge is smoothing generally</p> <p>23 consistent with the actuarial standards of practice?</p> <p>24 MR. MILLER: Object to form.</p> <p>25 A. Well, I can tell you, Mr. Ruegger, later this year new</p>

<p style="text-align: right;">Page 65</p> <p>1 GASB standards go into effect, GASB 67 and 68, that</p> <p>2 actually for financial reporting purposes will not</p> <p>3 allow smoothing.</p> <p>4 Q. Okay, so then go back to my question, which related to</p> <p>5 actuary standards or practice. Is not smoothing</p> <p>6 consistent and endorsed by actuarial standards of</p> <p>7 practice?</p> <p>8 MR. MILLER: Object to form.</p> <p>9 A. As we established earlier, I'm not an actuary so I</p> <p>10 can't comment on that. I am a CPA so I can comment on</p> <p>11 financial reporting standards.</p> <p>12 Q. Do you -- there's some reference here.</p> <p>13 You'll see in paragraph 14, the first</p> <p>14 sentence references the City's estimated underfunding</p> <p>15 of approximately \$3.5 billion. Do you see that</p> <p>16 reference?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you know whether that calculation was based on the</p> <p>19 assumption the systems would continue or that they</p> <p>20 would be frozen?</p> <p>21 MR. MILLER: Object to form.</p> <p>22 A. My understanding is that this is based on the</p> <p>23 assumption that the plans would continue.</p> <p>24 Q. And if the plans were to continue, would, in your</p> <p>25 view, it be more appropriate to use actuarial values</p>	<p style="text-align: right;">Page 67</p> <p>1 MR. MILLER: Object to form.</p> <p>2 A. Based on the discussions that would have taken place</p> <p>3 with Mr. Orr, yes, he is in agreement with these</p> <p>4 statements.</p> <p>5 Q. In paragraph 15 of your declaration you address the</p> <p>6 systems' use of 29- and 30-year amortization periods</p> <p>7 for funding the underfunding. Do you see that</p> <p>8 discussion, sir?</p> <p>9 A. Yes, sir.</p> <p>10 MR. MILLER: Let me object to form in</p> <p>11 connection with the prior question.</p> <p>12 MR. RUEGGER: That's fine.</p> <p>13 Q. Do you have any understanding whether amortization</p> <p>14 periods of 29 and 30 years are commonly used for</p> <p>15 governmental pension plans?</p> <p>16 A. Commonly used I think is difficult to say, because</p> <p>17 there are obviously probably thousands of pension</p> <p>18 plans in the United States, so not having the data to</p> <p>19 understand how often that's used, I am aware of other</p> <p>20 plans, other governmental plans, that use 29- or</p> <p>21 30-year amortizations.</p> <p>22 Q. Do you have any understanding whether the amortization</p> <p>23 periods used for the PFRS and the GRS are matters that</p> <p>24 were voted on by the Detroit city council?</p> <p>25 A. I don't know how the board comes to decide on its</p>
<p style="text-align: right;">Page 66</p> <p>1 for assets and liabilities or market figures for</p> <p>2 assets and liabilities?</p> <p>3 MR. MILLER: Object to form.</p> <p>4 A. It depends on for what purpose the calculation is</p> <p>5 being made.</p> <p>6 Q. Okay. And can you explain that answer?</p> <p>7 A. If you are referring to for financial reporting</p> <p>8 purposes, I can comment on the basis that is included</p> <p>9 in GASB Statements 67 and 68 that are coming out. As</p> <p>10 to whether it is appropriate from an actuarial</p> <p>11 standpoint, again, because I'm not an actuary, I can't</p> <p>12 comment on that.</p> <p>13 Q. When you refer to the City in these -- starting in</p> <p>14 paragraph 11, who at the City are you referring to?</p> <p>15 MR. MILLER: Object to form.</p> <p>16 Q. Or I'll try it again.</p> <p>17 Who working within or for the City do you</p> <p>18 include when you make a reference such as in the</p> <p>19 beginning of paragraph 11 related to the City's view?</p> <p>20 MR. MILLER: Object to form.</p> <p>21 A. My primary contact at this point within the City is</p> <p>22 Mr. Kevyn Orr.</p> <p>23 Q. So when you reference the City's view or the City's</p> <p>24 position in your declaration in Moore Exhibit 1, you</p> <p>25 mean Mr. Orr?</p>	<p style="text-align: right;">Page 68</p> <p>1 policies.</p> <p>2 Q. And the board you're talking about here is the board</p> <p>3 that -- of the systems, the respective systems --</p> <p>4 withdrawn.</p> <p>5 And when you say the board, do you mean the</p> <p>6 board of the GRS, the General Retirement System, or</p> <p>7 the -- and/or the PFRS?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So the policy -- withdrawn.</p> <p>10 So the amortization period in your view is</p> <p>11 approved by the board of the respective systems;</p> <p>12 correct?</p> <p>13 A. That's my understanding.</p> <p>14 Q. And if I'm understanding your testimony, you don't --</p> <p>15 you do not have an understanding of whether the city</p> <p>16 council also weighs in on that amortization period;</p> <p>17 correct?</p> <p>18 A. Correct, I do not have visibility if there are other</p> <p>19 individuals that influence the boards' decisions as to</p> <p>20 policies.</p> <p>21 MR. RUEGGER: All right. It's noon so I</p> <p>22 would like to go off the record and discuss the</p> <p>23 process for a second.</p> <p>24 (Discussion held off the record.)</p> <p>25 MR. RUEGGER: Back on the record. Off the</p>



<p style="text-align: right;">Page 69</p> <p>1 record we just discussed how counsel is trying to</p> <p>2 allocate various time, shared time with Mr. Moore and</p> <p>3 with Mr. Moore's consent, we're going to let</p> <p>4 Ms. Levine ask questions now. I am not done, but</p> <p>5 we're hopeful after Ms. Levine and Mr. Ciantra and</p> <p>6 whoever else wants to ask questions that we can get</p> <p>7 back to my questions and not take too much time from</p> <p>8 Mr. Moore and Evan.</p> <p>9 MR. MILLER: And that's acceptable to us</p> <p>10 and the deponent.</p> <p>11 EXAMINATION</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Good afternoon. Sharon Levine, Lowenstein Sandler,</p> <p>14 for AFSCME. Thank you for appearing today.</p> <p>15 A. Thank you.</p> <p>16 Q. In preparation for today's deposition did you speak to</p> <p>17 anyone at the -- about the City's Chapter 9 case or</p> <p>18 your declaration?</p> <p>19 A. Yes.</p> <p>20 Q. And with whom did you speak?</p> <p>21 A. I spoke with Mr. Miller.</p> <p>22 Q. Anybody else?</p> <p>23 A. No.</p> <p>24 Q. Did you speak with Mr. Orr?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. MILLER: What is -- I don't believe</p> <p>2 there was a question pending.</p> <p>3 Q. No, there wasn't, I'm just asking. Have you seen this</p> <p>4 email before today?</p> <p>5 A. I am on this email so it certainly appears that I</p> <p>6 would have seen it.</p> <p>7 Q. But judging by the nature of your answer, you don't</p> <p>8 have an independent recollection; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Mr. Baird is copied in the -- Mr. Baird is referenced</p> <p>11 in the email change; correct?</p> <p>12 A. Mr. Baird?</p> <p>13 Q. Yeah, Mr. Baird.</p> <p>14 A. At the bottom I see that there is a --</p> <p>15 Q. You realize on the transcript it's going to be tomato</p> <p>16 tomato?</p> <p>17 A. Oh, I see, it's on the back as well. So yes, I do see</p> <p>18 that.</p> <p>19 Q. Okay, Mr. Baird is in the governor's office; correct?</p> <p>20 A. That's my understanding, yes.</p> <p>21 Q. Did you discuss your retention in this matter with</p> <p>22 anyone in the governor's office?</p> <p>23 MR. MILLER: Object to form.</p> <p>24 A. At which time, Ms. Levine?</p> <p>25 Q. In or about May of 2012.</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Did you speak with any city or State employees?</p> <p>2 A. No.</p> <p>3 Q. And when did you speak with Mr. Miller?</p> <p>4 A. On Monday and I also spoke with him yesterday.</p> <p>5 Q. When you spoke on Monday, what did you discuss?</p> <p>6 MR. MILLER: Objection. And Sharon, let's</p> <p>7 see how we can parse this in a way that doesn't reveal</p> <p>8 confidential attorney-client communications. How</p> <p>9 about if the question is rephrased so that Mr. Moore</p> <p>10 generally addresses the topics that were discussed.</p> <p>11 MS. LEVINE: We can get to that, but first</p> <p>12 instance is -- let's go -- let's try this first.</p> <p>13 Q. By whom were you retained?</p> <p>14 A. City of Detroit. And I assume when you say you,</p> <p>15 you're referring to Conway MacKenzie?</p> <p>16 Q. Conway MacKenzie. By whom is Conway MacKenzie</p> <p>17 retained?</p> <p>18 A. The City of Detroit in this matter.</p> <p>19 (Marked Exhibit No. 4.)</p> <p>20 Q. I'm going to show you what's been marked Moore 4 for</p> <p>21 identification. Do you recognize that email?</p> <p>22 MR. MILLER: Is this your only copy?</p> <p>23 MS. LEVINE: Apologize. Well, I don't have</p> <p>24 a lot, but a couple.</p> <p>25 Q. Have you seen it?</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Our interest in being retained in the case, yes.</p> <p>2 (Marked Exhibit No. 5.)</p> <p>3 Q. I'm going to show you what's been marked Moore 5 for</p> <p>4 identification. Do you recognize this email?</p> <p>5 MR. MILLER: There's more than one email.</p> <p>6 Q. Do you recognize -- well, actually it's one email with</p> <p>7 forwards. Do you recognize the email chain on Moore</p> <p>8 5?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. Were you continuing to discuss the possibility of</p> <p>11 Conway MacKenzie's retention by the City with</p> <p>12 Mr. Baird?</p> <p>13 MR. MILLER: Object to form.</p> <p>14 A. Exhibit 4 and Exhibit 5 appear to be the same thing,</p> <p>15 at least from the standpoint of the original email</p> <p>16 exchange.</p> <p>17 Q. Okay, so you were having conversations with Mr. Baird</p> <p>18 in or about May of 2012 with regard to your engagement</p> <p>19 -- with regard to you, meaning Conway MacKenzie's</p> <p>20 engagement by the City?</p> <p>21 MR. MILLER: Object to form.</p> <p>22 A. Yes. As I had stated earlier, and it appears these</p> <p>23 emails all were on May 21st, that we were discussing</p> <p>24 our interest in having a role with the City of</p> <p>25 Detroit.</p>



<p style="text-align: right;">Page 73</p> <p>1 Q. Were there conversations that involved you, anybody 2 from the -- somebody from the State and somebody from 3 the City in or about that same time frame with regard 4 to Conway MacKenzie's engagement by the City? 5 MR. MILLER: Object to form. 6 A. You're referring to at the same time? 7 Q. Yes. 8 A. Not that I can recall. 9 Q. Were you having separate conversations with Mayor Bing 10 or anybody else on behalf of the City with regard to 11 your engagement in or about the May/June time frame 12 2012? 13 MR. MILLER: Object to form. 14 A. In around May I don't think so. As I had indicated in 15 previous questioning, my partner, Van Conway, had 16 spoken to Mr. Bing -- or Mayor Bing, but that would 17 have been before the financial stability agreement and 18 my next interaction with the City would have been 19 after Kriss Andrews was identified as the program 20 management director, which wasn't until, if I recall 21 correctly, June of 2012. 22 (Marked Exhibit No. 6.) 23 Q. I'm going to show you what's been marked Moore 6 for 24 identification. Mr. Ciantra made a fair request. The 25 document number is DTMI00078512.</p>	<p style="text-align: right;">Page 75</p> <p>1 specification for operational at that point. 2 Q. What's the reference in the second sentence then? 3 Conway MacKenzie prefers a role as restructuring 4 advisor but will consider a role as operating advisor 5 if asked. 6 MR. MILLER: I'm sorry, in connection 7 with -- 8 MS. LEVINE: Page 3 of Moore -- 9 MR. RUEGGER: Six? 10 MS. LEVINE: Six. 11 A. The -- 12 MR. MILLER: Wait. Can you repeat the 13 question? 14 (Record read back as requested.) 15 A. As I mentioned, Ms. Levine, the RFP that went out in 16 November was just for restructuring advisor and there 17 was a scope of services associated with that. At some 18 point subsequent to that we were approached about 19 having a specific role on the operational side, which 20 as Mr. Andrews apparently wrote here we indicated that 21 we would consider that role. 22 Q. What were the scope of services to be provided by the 23 restructuring advisor to the City according to the RFP 24 you just referenced? 25 A. I don't recall offhand.</p>
<p style="text-align: right;">Page 74</p> <p>1 Do you recognize this email? 2 A. No, I don't. 3 Q. Okay. There's a discussion in this email of two or 4 three firms providing financial restructuring services 5 to the City. In or about December of 2012 was 6 Conway MacKenzie being considered for a role with the 7 City? 8 MR. MILLER: Well -- are you finished with 9 your question? I'm sorry. 10 MS. LEVINE: There was -- that was the end 11 of the question. 12 MR. MILLER: Object to form. 13 A. Ms. Levine, if you can just give me a minute to review 14 the email. 15 Ms. Levine, can you repeat your question? 16 Q. Let me do it a different way. 17 There's a -- were you being considered for 18 the role of restructuring advisor to the City? 19 A. In December of 2012? 20 Q. Yes. 21 A. That's my understanding, yes. 22 Q. Were you also being considered for the role of 23 operational advisor? 24 A. If I recall correctly, the RFP that went out was just 25 for restructuring advisory services. There was not a</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Generally what are the scope of services or what's 2 your understanding of the scope of services a firm 3 like Conway MacKenzie would perform as a restructuring 4 advisor? 5 MR. MILLER: Object to form. 6 A. Rather than speculate on what was in that RFP -- 7 Q. No, I changed the question. What's your understanding 8 of what a firm like yours, what would be the scope of 9 services you would perform as a restructuring advisor? 10 A. You're asking me in general if a company or a 11 governmental entity is asking for restructuring 12 advisory services, what -- 13 Q. Conway MacKenzie prefers a role as restructuring 14 advisor. I'm asking you what's your understanding of 15 the services a firm like Conway MacKenzie would 16 perform in the role of restructuring advisor? 17 A. Ms. Levine, you're asking a question that is somewhat 18 vague and so I'm just trying to clarify. My -- and 19 what I want to understand is are you asking about the 20 services -- 21 Q. Let me ask it a different -- 22 A. -- the services -- 23 MR. MILLER: No, let him finish. 24 A. Are you asking about the services that we would 25 provide in this situation or in any situation?</p>



<p>Page 77</p> <p>1 Q. Let me ask it a different way.</p> <p>2 Are the services provided by a</p> <p>3 restructuring -- is it your understanding that the</p> <p>4 services that are provided by a restructuring advisor</p> <p>5 are broader in scope and greater than the services</p> <p>6 that would be provided as an operational advisor?</p> <p>7 A. I don't know if I have an opinion on that. Those are</p> <p>8 two different terms. These are not defined terms.</p> <p>9 Q. Why -- what's your understanding of why</p> <p>10 Conway MacKenzie would prefer the role of</p> <p>11 restructuring advisor over the role of operational</p> <p>12 advisor?</p> <p>13 MR. MILLER: Object to form.</p> <p>14 A. As it was presented to us in this specific situation,</p> <p>15 the operational role was slightly more narrow in scope</p> <p>16 than what was contained in the overall restructuring</p> <p>17 advisor RFP. The City ended up selecting multiple</p> <p>18 firms and parsing out the different responsibilities.</p> <p>19 Q. So but at this point in time it was your understanding</p> <p>20 that the restructuring advisor role was basically a</p> <p>21 bigger, more broad role than the role that the City</p> <p>22 was then contemplating for the operational advisor?</p> <p>23 A. The services that were listed in the RFP --</p> <p>24 Q. It's a yes or no question.</p> <p>25 MS. LEVINE: Can you read back my question,</p>	<p>Page 79</p> <p>1 than what our scope ended up being as operational</p> <p>2 advisor.</p> <p>3 MS. LEVINE: Let me try it a different way.</p> <p>4 Q. Was it your understanding back -- at the point in time</p> <p>5 that Conway MacKenzie was indicating it preferred a</p> <p>6 role as restructuring advisor but would consider a</p> <p>7 role as operational advisor, was it your understanding</p> <p>8 that the restructuring advisor role if given to just</p> <p>9 one firm would have been a more lucrative engagement?</p> <p>10 A. How do you define lucrative?</p> <p>11 Q. Would your firm have earned more fees as restructuring</p> <p>12 advisor as originally -- as you understood it -- as</p> <p>13 you understood -- let me start again.</p> <p>14 Would your firm have earned more fees in</p> <p>15 the role of restructuring advisor as you understood it</p> <p>16 in December of 2012 than as you've understood the role</p> <p>17 of operational advisor at that time?</p> <p>18 A. That's unclear to me.</p> <p>19 Q. When you say the role of restructuring advisor was a</p> <p>20 bigger role or was a -- had you indicated the role of</p> <p>21 restructuring advisor was a broader role and a role</p> <p>22 that was then split up among other firms and you were</p> <p>23 interested in the role when you thought it was going</p> <p>24 to be just one firm, did you believe that that role</p> <p>25 was going to be requiring more services than the role</p>
<p>Page 78</p> <p>1 please?</p> <p>2 (Record read back as requested.)</p> <p>3 A. Ms. Levine, the reason why I can't answer it as a yes</p> <p>4 or no is because you're referring to a specific role</p> <p>5 and what I'm trying to clarify is that in the RFP</p> <p>6 there was a scope of services, restructuring services,</p> <p>7 that were being asked for. The operational advisor</p> <p>8 was to address a specific part of those scope of</p> <p>9 services.</p> <p>10 Q. We'll try again.</p> <p>11 Conway MacKenzie prefers a role as</p> <p>12 restructuring advisor but will consider a role as</p> <p>13 operating advisor if asked. What's your understanding</p> <p>14 of why Conway MacKenzie prefers the role of</p> <p>15 restructuring advisor over the role of operational</p> <p>16 advisor?</p> <p>17 A. It was our understanding when the RFP went out that</p> <p>18 the City would be selecting one firm to provide those</p> <p>19 services. As time went on, the City considered and</p> <p>20 eventually did assign those responsibilities to</p> <p>21 multiple firms.</p> <p>22 Q. So the restructuring advisory role at that time it was</p> <p>23 your understanding was going to be a bigger role?</p> <p>24 A. The restructuring advisor role is not a defined role.</p> <p>25 The scope of services that was in the RFP was greater</p>	<p>Page 80</p> <p>1 of operational advisor?</p> <p>2 MR. MILLER: Object to form.</p> <p>3 A. Ms. Levine, you keep using the word role and I keep</p> <p>4 going back to there was not a restructuring advisor</p> <p>5 role. There was an RFP that went out in November</p> <p>6 which contained a number of potential services and the</p> <p>7 role, the operational advisor role that we ended up</p> <p>8 getting engaged for, was a subset of the services.</p> <p>9 There was no guaranty though that the firm -- that the</p> <p>10 City was going to engage one firm for all those</p> <p>11 services. Those services were potential services.</p> <p>12 Q. I'll try again. Conway MacKenzie prefers a role as</p> <p>13 restructuring advisor but will consider a role as</p> <p>14 operational advisor. What's your understanding of</p> <p>15 what that sentence means?</p> <p>16 MR. MILLER: Object to form.</p> <p>17 A. If you have two options, on the one hand it is a</p> <p>18 broader scope of services versus a more narrow scope</p> <p>19 of services, then our understanding, if there was</p> <p>20 going to be one firm with that, there would be a</p> <p>21 broader scope of services than if it was parsed out</p> <p>22 into individual firms.</p> <p>23 Q. Okay.</p> <p>24 MS. LEVINE: Hungry?</p> <p>25 THE WITNESS: Not yet.</p>

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1 (Marked Exhibit No. 7.)

2 Q. I'm going to show you what's been marked as Moore 7.

3 This is an email dated December 19th, 2012

4 between you and Van Conway. Do you see that?

5 A. Yes, ma'am.

6 Q. There's an email chain, which has another email

7 attached. Is that correct?

8 A. Yes.

9 Q. Is this -- who is -- who's Van Conway?

10 A. Van Conway is a partner of mine and cofounder of the

11 firm, Conway MacKenzie.

12 Q. And who -- and what did you enclose in this email?

13 A. The email from Van to me?

14 Q. No, what did you enclose in -- sorry, it attaches an

15 email from you to Kriss Andrews; correct?

16 A. Yes.

17 Q. What did you enclose in the email?

18 A. Well, it says, here attached is a draft Exhibit A

19 containing the proposed scope of services for

20 Conway MacKenzie as part of its contract with the City

21 of Detroit, so I'm assuming that I attached a draft

22 Exhibit A.

23 Q. Do you recall what the scope of services you were

24 proposing as an attachment to this email?

25 A. I don't.

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1 Q. Did you understand what you meant by the word scope in

2 that email?

3 MR. MILLER: Object to form.

4 A. Can you please clarify your question?

5 Q. Well, were you responding to the RFP in the email or

6 is there a separate understanding of what you meant by

7 scope of services?

8 A. The RFP response that was submitted by our firm was

9 back in November and so this is a specific scope of

10 services related to our potential contract.

11 (Marked Exhibit No. 8.)

12 Q. I'm going to show you what's been marked Moore 8 for

13 identification.

14 MR. MILLER: Do you have another copy?

15 MS. LEVINE: Yes, it's right here. Sorry.

16 MR. MILLER: Thank you.

17 Q. DTMI00079527.

18 Do you recognize that email?

19 A. Looks like an email from me to Kriss Andrews.

20 Q. And what's enclosed and does it reference an

21 enclosure?

22 A. It references a draft Exhibit A containing the

23 proposed scope of services for Conway MacKenzie.

24 Q. Okay, do you recall what the scope of services were

25 that you included in that draft Exhibit A?

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1 A. No, I don't.

2 Q. Was it for restructuring advisors?

3 A. I don't recall.

4 (Marked Exhibit No. 9.)

5 Q. I'm going to show you what's been marked Moore 9 for

6 identification. DTMI00079526.

7 Do you recognize this email?

8 A. No, I don't.

9 Q. Okay, it appears to be an email from Kriss Andrews to

10 Mr. Baird attaching a scope of work from

11 Conway MacKenzie, also dated December 2012?

12 A. I -- I understand that, yes.

13 Q. Is that -- does that refresh your recollection as to

14 whether or not you saw the email?

15 A. No, Ms. Levine, I'm not on this email. I don't recall

16 receiving this email.

17 Q. Okay. The email references the need to get a contract

18 on the council agenda for the 8th. Is that for

19 January 8th?

20 A. I would assume so, since that is when council actually

21 took up our contract.

22 Q. Did you have any conversations with Mr. Baird with

23 regard to getting retained and in connection with --

24 in regard to getting retained in or about this time

25 frame?

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1 MR. MILLER: Object to form.

2 A. I believe I did, yes.

3 Q. And did you also have conversations with Kriss

4 Andrews?

5 A. Yes.

6 Q. Did you ever conversations with anybody else on behalf

7 of the State in or about this time frame with regard

8 to your engagement?

9 A. Yes.

10 Q. And did you have other conversations with anybody else

11 on behalf of the City with regard to your engagement?

12 A. I don't believe so. I think just Kriss Andrews.

13 Q. And prior to the time of the -- let me put it this

14 way. Is the agenda for the 8th, is that a city

15 council meeting?

16 A. Well, it says council agenda for the 8th and city

17 council took up our proposed contract on January 8th

18 so I'm assuming that that's what he's referring to,

19 but again, I did not write this email.

20 Q. Did you negotiate the proposed terms of your

21 engagement with anybody at the State level?

22 A. Could you be more specific on terms of the contract?

23 Q. No, I didn't -- that wasn't the question. Did you

24 negotiate your proposed terms of engagement with

25 anybody at the State level --



<p>Page 85</p> <p>1 MR. MILLER: Object --</p> <p>2 Q. -- in or about December 2012?</p> <p>3 A. If you can just be clear on when you say negotiate,</p> <p>4 what are you referring to?</p> <p>5 Q. Did you have any discussions with -- okay, we're -- I</p> <p>6 forgot, negotiate's a big word in this case. Strike</p> <p>7 that, I'll rephrase it.</p> <p>8 Did you have any discussions with anybody</p> <p>9 at the State with regard to the terms of your</p> <p>10 engagement in or about December of 2012?</p> <p>11 A. I seem to recall, yes.</p> <p>12 Q. With whom did you have those discussions?</p> <p>13 A. Rich Baird and probably Andy Dillon.</p> <p>14 Q. Anybody else?</p> <p>15 A. Not that I can recall.</p> <p>16 Q. Did you have discussions with anybody at the City</p> <p>17 level with regard to the terms of your engagement in</p> <p>18 or about December of 2012?</p> <p>19 MR. MILLER: Object to form.</p> <p>20 A. As I indicated before, Kriss Andrews.</p> <p>21 Q. Anybody else?</p> <p>22 A. Not that I can recall.</p> <p>23 MR. MILLER: Object to form.</p> <p>24 Q. Were any of these discussions either with</p> <p>25 representatives of the State or representatives of the</p>	<p>Page 87</p> <p>1 A. Perhaps two.</p> <p>2 Q. Who was present?</p> <p>3 A. At one meeting I met with Rich Baird and Darrell Burks</p> <p>4 was present in his capacity as a member of the</p> <p>5 financial advisory board and then in another meeting</p> <p>6 that would have been with Andy Dillon.</p> <p>7 Q. Was anybody else present at the meeting you were at</p> <p>8 with Andy Dillon?</p> <p>9 A. I recall Andy's assistant was in the room and I think</p> <p>10 Tom Saxton was on the phone.</p> <p>11 Q. Who's Tom Saxton?</p> <p>12 A. Tom, as I understand it, works in Andy's area, the</p> <p>13 treasury department for the State of Michigan.</p> <p>14 Q. Were there any meetings in or about this same time</p> <p>15 frame with just representatives of the City?</p> <p>16 A. Yes.</p> <p>17 Q. And how many of those meetings took place?</p> <p>18 A. I don't recall.</p> <p>19 Q. More than five?</p> <p>20 A. Face-to-face meetings, I don't think so.</p> <p>21 Q. How many -- were there more than five meetings</p> <p>22 telephone and face-to-face?</p> <p>23 A. Very possibly. This was -- the RFP -- our response to</p> <p>24 the RFP went out early in November and this is</p> <p>25 obviously mid to later December so that's a lot of</p>
<p>Page 86</p> <p>1 City in person?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Who was present in the in person meetings?</p> <p>4 MR. MILLER: Object to form.</p> <p>5 MR. CIANTRA: Can you specify, Mr. Miller,</p> <p>6 what your formal objection is to that question so we</p> <p>7 can obviate any dispute in the future?</p> <p>8 MR. MILLER: Yes, it doesn't parse as to</p> <p>9 whether the in person meetings are with</p> <p>10 representatives of the State or representatives of the</p> <p>11 City.</p> <p>12 MR. CIANTRA: Thank you.</p> <p>13 Q. Did you have any meetings with either representatives</p> <p>14 of the State or the City in or about December of 2012</p> <p>15 with regard to the terms of your -- or the scope of</p> <p>16 your engagement by the City?</p> <p>17 A. In person?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. How many meetings took place?</p> <p>21 A. I don't recall.</p> <p>22 Q. Were there any meetings that took place just with</p> <p>23 representatives of the State?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall how many of those meetings took place?</p>	<p>Page 88</p> <p>1 time to have discussions.</p> <p>2 Q. Were there any discussions that took place between you</p> <p>3 in which both the State and City representatives</p> <p>4 participated?</p> <p>5 A. The initial meetings that all of the firms -- or at</p> <p>6 least the firms that the State and the City invited in</p> <p>7 as a result of the responses to the RFPs were both the</p> <p>8 City and the State. There was at least one follow-up</p> <p>9 interview with representatives of both the City and</p> <p>10 the State, there may have been two follow-up</p> <p>11 interviews, I can't recall.</p> <p>12 Q. Were there any telephone conferences where</p> <p>13 representatives of both the City and the State</p> <p>14 participated in or about December of 2012?</p> <p>15 A. I don't recall if there were telephone calls where</p> <p>16 both the City and the State were on.</p> <p>17 (Marked Exhibit No. 10.)</p> <p>18 Q. I'm going to show you what's been marked Moore 11.</p> <p>19 Document DTMI00079528.</p> <p>20 MR. MILLER: There's no Moore 10 that's</p> <p>21 been introduced.</p> <p>22 MS. LEVINE: I'm sorry, this is Moore 10</p> <p>23 and this one, I don't know, I must have gotten ahead</p> <p>24 of myself.</p> <p>25 Q. Okay, Exhibit A, scope of services, do you see that</p>

<p>Page 89</p> <p>1 document?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Is this --</p> <p>4 MR. MILLER: Wait one moment because of the</p> <p>5 confusion generated by the identification of this</p> <p>6 document, let's specifically identify it as</p> <p>7 DTMI00079528 through 530.</p> <p>8 Q. Do you see that document in front of you? It's</p> <p>9 Exhibit A, scope of services?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Does this -- is this the Exhibit A that was attached</p> <p>12 to the emails we were just discussing?</p> <p>13 A. I have no idea.</p> <p>14 MR. MILLER: Wait.</p> <p>15 Q. Okay. Do you recall providing this document to the</p> <p>16 State and the City in or about December of 2012?</p> <p>17 A. I don't recall.</p> <p>18 Q. I want to show you the first paragraph where it says,</p> <p>19 the terms of this contract shall begin on January 9,</p> <p>20 2013 and shall terminate on December 31, 2013.</p> <p>21 Did you respond to an RFP for the City to</p> <p>22 provide services during that time frame?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Did you provide -- did you provide -- respond to an</p> <p>25 RFP to provide services as the chief restructuring</p>	<p>Page 91</p> <p>1 into between Conway MacKenzie and the City of Detroit.</p> <p>2 Q. Did you participate in the negotiation of this final</p> <p>3 contract?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review this final contract before it was</p> <p>6 executed?</p> <p>7 A. Yes.</p> <p>8 Q. Did you sign-off on the terms of this contract before</p> <p>9 it was executed?</p> <p>10 A. Yes.</p> <p>11 Q. On the page marked DTMI00078925, it appears to be a</p> <p>12 January 7, 2013 letter, which is part of -- is it your</p> <p>13 understanding that this letter is part of the</p> <p>14 contract?</p> <p>15 MR. MILLER: Object to form.</p> <p>16 A. Ms. Levine, I would just point out that that appears</p> <p>17 to me to be a bit of a legal question as to whether</p> <p>18 this is part of a contract and I don't know if I'm</p> <p>19 able to answer that question.</p> <p>20 Q. Okay. Is it your understanding that the City is</p> <p>21 responsible for half of your fees and the State is</p> <p>22 responsible for half of your fees?</p> <p>23 A. That is my understanding, yes.</p> <p>24 Q. How did you -- how did that agreement come into being</p> <p>25 if you're -- and well, let me do it a different way.</p>
<p>Page 90</p> <p>1 officer for the City of Detroit?</p> <p>2 MR. MILLER: Object to form.</p> <p>3 Q. During that time frame?</p> <p>4 A. Chief restructuring officer?</p> <p>5 Q. Sorry, chief restructuring advisor.</p> <p>6 A. I don't recall if the RFP asked specifically for that.</p> <p>7 Q. Well, the document that we're looking at says, the</p> <p>8 services to be performed, the contractor will serve as</p> <p>9 chief restructuring advisor to the City of Detroit.</p> <p>10 In its capacity as CRA, contractor will be the lead</p> <p>11 restructuring agent for the City of Detroit and will</p> <p>12 coordinate activities of the various City of Detroit</p> <p>13 advisors.</p> <p>14 Does that refresh your recollection?</p> <p>15 A. Ms. Levine, this is a document that could have been</p> <p>16 drafted by Conway MacKenzie, it could have been</p> <p>17 drafted by the City of Detroit, I'm not sure. What</p> <p>18 does appear to me, though, is based on what you just</p> <p>19 read this is not the scope of services that wound up</p> <p>20 in the final contract.</p> <p>21 (Marked Exhibit No. 11.)</p> <p>22 Q. I'm going to show you what's been marked Moore 11.</p> <p>23 Document number DTMI00078909. Do you recognize this</p> <p>24 document?</p> <p>25 A. This appears to be the final contract that was entered</p>	<p>Page 92</p> <p>1 Are you engaged by the City?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. How did it come to pass that the State pays for half</p> <p>4 of your fees?</p> <p>5 A. I don't know if I actually can respond to that. When</p> <p>6 the City decided to issue an RFP for restructuring</p> <p>7 services, it had been indicated, at least I read</p> <p>8 through public reports, that the State was going to</p> <p>9 pay for half of that.</p> <p>10 Q. Is it your understanding that the City is your client?</p> <p>11 A. Yes, ma'am.</p> <p>12 MR. MILLER: Wait, object to form.</p> <p>13 MS. LEVINE: What's the objection to the</p> <p>14 form?</p> <p>15 MR. MILLER: Among other things it calls</p> <p>16 for a legal conclusion.</p> <p>17 MS. LEVINE: I'm asking him his</p> <p>18 understanding.</p> <p>19 Q. Is it your understanding that the City is your client?</p> <p>20 MR. MILLER: Go ahead.</p> <p>21 A. Yes.</p> <p>22 Q. Who did you -- upon you -- upon becoming engaged</p> <p>23 initially, to whom did you report on behalf of the</p> <p>24 City?</p> <p>25 A. I reported primarily to Kriss Andrews. I interacted</p>

<p style="text-align: right;">Page 93</p> <p>1 with Jack Martin a fair amount, but Kriss Andrews was 2 my primary point of contact. 3 Q. Did you also report immediately upon being engaged to 4 anybody at the State? 5 A. Can you refer to or define what you mean by report to? 6 Q. Did you have conversations with people at the State 7 after being engaged by the City without the City on 8 the phone? 9 MR. MILLER: Object to form. 10 MS. LEVINE: What's the objection? 11 MR. MILLER: It doesn't indicate whether 12 the conversations are in connection with the contract 13 or what the conversations are in connection with. 14 Q. Immediately after becoming engaged by the City -- you 15 were engaged in or about January what? 16 A. 9th, I believe. 17 Q. Okay. From the period of January 9th through July 18 18th, did there come -- did you have any conversations 19 with anybody at the City at which the State -- sorry, 20 with anybody at the State at which the City was not on 21 the phone with regard to the Detroit situation? 22 Anything with regard to the Detroit situation? 23 A. I'm sure that I did. 24 Q. Did there come a point in time where you had 25 conversations with people at the State at which the</p>	<p style="text-align: right;">Page 95</p> <p>1 identified yesterday and the day before? 2 MR. MILLER: Objection, and I'm going to 3 instruct the witness not to respond. 4 MS. LEVINE: Lunchtime. 5 (Luncheon recess between 6 12:55 p.m. and 1:30 p.m.) 7 MS. LEVINE: Mr. Moore, before we go onto 8 another topic I just want to clarify. Your counsel 9 directed you not to answer just prior to the lunch 10 break. Are you asserting the attorney-client 11 privilege? 12 MR. MILLER: Yes, Mr. Moore has consented 13 to having Jones Day represent him in connection with 14 this deposition and if I recall, you, AFSCME, have 15 consented to have the City put Mr. Moore forward as a 16 representative of the City in connection with the 17 30(b)(6) deposition. So yes, we represent Mr. Moore 18 in connection with this deposition and I am 19 instructing him not to answer the question on the 20 grounds of attorney-client privilege. 21 MS. LEVINE: And just to clarify so you're 22 not representing Conway MacKenzie, you're representing 23 Mr. Moore in his capacity as the 30(b)(6) witness for 24 the City -- 25 MR. MILLER: In --</p>
<p style="text-align: right;">Page 94</p> <p>1 City was not on the phone with regard to filing 2 Detroit's Chapter 9 petition? 3 A. Not that I -- 4 MR. MILLER: Let me just pay attention to 5 this question. Go ahead. No objection. 6 A. Could you now repeat the question? 7 MS. LEVINE: Can you repeat the question? 8 (Record read back as requested.) 9 A. Not that I can recall. 10 Q. Did you have any -- did you attend any meetings with 11 representatives of the State at which the City wasn't 12 present with regard to Detroit's filing its Chapter 9 13 petition? 14 A. No, ma'am. 15 Q. Okay. So now going back. We discussed earlier and 16 got sidetracked with regard to the conversation you 17 had with Mr. Miller with regard to preparing for 18 today's deposition. Are you -- according to this 19 contract you're engaged by the City; correct? 20 A. Yes, ma'am. 21 Q. Is that engagement contract with the City or is that 22 engagement contract with Jones Day? 23 A. It's with the City. 24 Q. What did you discuss with Mr. Miller to prepare for 25 today's deposition at the two meetings you previously</p>	<p style="text-align: right;">Page 96</p> <p>1 MS. LEVINE: -- on behalf of the City? 2 MR. MILLER: In his capacity as a 30(b)(6) 3 witness and in his capacity as a subpoenaed person in 4 connection with the independent subpoena, he has 5 agreed to have us represent him. 6 MS. LEVINE: What do you mean by to have us 7 represent him? Is that Jones Day representing him 8 individually, representing Conway MacKenzie? 9 MR. MILLER: We're not representing 10 Conway MacKenzie. That's not -- well, let me take a 11 break and speak to my client about that. 12 MS. LEVINE: Okay. 13 (A brief recess was taken.) 14 MR. MILLER: Back on the record. 15 Let me clarify for the record that 16 Jones Day does not represent Conway MacKenzie, we are 17 representing Mr. Moore as a witness in this 18 deposition. 19 BY MS. LEVINE: 20 Q. Moving on. You testified previously I believe that 21 you testified twice as an expert -- in two cases as an 22 expert witness. One with regard to GM and one with 23 regard to the casino downtown, the Greektown Casino; 24 is that correct? 25 A. Yes, ma'am.</p>



<p style="text-align: right;">Page 97</p> <p>1 Q. Have you testified in court as an expert witness other 2 than in connection with those two cases? 3 MR. MILLER: Object to form. Asked and 4 answered. 5 MS. LEVINE: I'm not -- I wanted to 6 streamline and not go over again what he went through. 7 A. I don't believe so. 8 Q. Okay. What was the court where GM was pending? 9 A. I believe that was a Federal District Court, Eastern 10 District of Michigan. 11 Q. Okay. And where -- and were you qualified by the 12 judge? Were you found to be an expert? In other 13 words, was there a specific finding that you qualified 14 as an expert? 15 A. I don't know. 16 Q. Do you -- okay. What were you offered to testify 17 about? 18 A. The automotive industry and supplier relations. 19 Q. But you don't recall whether or not the judge 20 specifically found you to be an expert in those two 21 areas? 22 A. I don't know. 23 MR. MILLER: Well, object to form. 24 A. From the standpoint of I certainly was not involved in 25 every hearing that would have gone on. I don't</p>	<p style="text-align: right;">Page 99</p> <p>1 expert? 2 A. As it relates to the restructuring -- bankruptcy 3 restructuring of Greentown. 4 Q. And the -- were you qualified as an expert in relation 5 to pensions? 6 A. Pensions were not an issue with Greentown. 7 Q. Were you qualified as an expert with regard to 8 actuarial findings? 9 A. Actuarial findings were not an issue in Greentown. 10 Q. So for both of those questions then the answer is no? 11 A. Correct. 12 Q. Did you have any role in the hiring of Kevyn Orr as 13 the Emergency Manager or the Emergency Financial 14 Manager for the City of Detroit? 15 A. No, ma'am. 16 Q. Did Conway MacKenzie have any role in the hiring of 17 Kevyn Orr in either of those two capacities? 18 A. No, ma'am. 19 Q. Did you have any role in the financial review team? 20 A. No, ma'am. 21 Q. Did Conway MacKenzie have any role in the financial 22 review team? 23 A. No. 24 Q. From -- when was the first time you had a conversation 25 with anybody with the City with regard to Detroit</p>
<p style="text-align: right;">Page 98</p> <p>1 know -- 2 Q. No, no. Sometimes when an expert takes the stand, 3 first you do voir dire and then he starts to testify 4 and in between asking about your background and CV and 5 starting the substantive testimony the judge will say 6 I qualify you as an expert or no I don't qualify you 7 as an expert. What I'm trying to understand is in 8 those two cases did the judge qualify you as an expert 9 and if so in what categories? 10 A. Yes, I understand that process exactly. As I 11 indicated before, the GM case settled before I had to 12 testify. 13 Q. Okay. 14 A. So I was deposed in that case. 15 Q. Okay, so you were deposed but you didn't have to take 16 the stand in court? 17 A. Yes, ma'am. 18 Q. Okay, good. 19 In regard to Greentown did you have to take 20 the stand in the courthouse? 21 A. Yes, ma'am. 22 Q. And did the judge in that case qualify you as an 23 expert? 24 A. Yes, ma'am. 25 Q. And this what area did the judge qualify you as an</p>	<p style="text-align: right;">Page 100</p> <p>1 filing for Chapter 9 protection? 2 A. Can you just clarify that just the -- whether that was 3 a possibility or -- 4 Q. I want to know the first time the word Chapter 9 came 5 up in discussions with regard to the City of Detroit. 6 Possibility, options, alternatives, any context. 7 MR. MILLER: But the conversation is with 8 somebody in the City? 9 MS. LEVINE: Yes. 10 A. I don't recall specifically. 11 Q. Do you recall if it was before the end of 2012? 12 A. I don't recall. 13 Q. When was the first time you had a conversation with 14 anybody from the State or on behalf of the State with 15 regard to the potential for Detroit filing for Chapter 16 9 bankruptcy protection? 17 A. I don't recall. 18 Q. Did those conversations come up during the interview 19 process with the State and Conway MacKenzie? 20 MR. MILLER: Object to form. 21 A. I don't recall. 22 Q. So when you interviewed with the State for your role 23 with the City, you don't recall having discussions 24 with regard to Chapter 9 as an alternative? 25 MR. MILLER: Object to form.</p>



<p style="text-align: right;">Page 101</p> <p>1 A. To go back to how I had answered before, there were at 2 least two if not three interview sessions and those 3 were jointly held with City and State representatives. 4 I can't recall at this point whether Chapter 9 was 5 discussed during those meetings or not. 6 Q. What's the first conversation you recall having with 7 anybody from the City or the State with regard to the 8 possibility of Detroit filing for Chapter 9 9 protection? 10 A. I don't recall what the -- I guess around the time 11 that the creditor plan was being discussed, certainly 12 the potential for a Chapter 9 filing had been 13 discussed and that was communicated publicly by 14 Mr. Orr, so I certainly recall that, but nothing 15 really before that. 16 Q. And when you use the word creditor plan, are you 17 referring to the June 14 creditor proposal? 18 A. Yes, ma'am. 19 Q. Between June 14 and January 17, that's the -- sorry, 20 June 14 and July 17, that's the time period we're 21 talking about, did you have any conversations with 22 anybody at the State with regard to Detroit filing for 23 Chapter 9 protection? 24 A. I don't believe I did. 25 Q. Between June 14 and July 17, did you have any</p>	<p style="text-align: right;">Page 103</p> <p>1 attorney-client privilege attaches to meetings in 2 which Jones Day attorneys were providing advice to the 3 City at which Conway MacKenzie personnel were present. 4 And I will instruct him not to answer. 5 MS. LEVINE: Can you read back my question? 6 (Record read back as requested.) 7 MS. LEVINE: Actually let me rephrase that 8 so we can parse the attorney-client privilege 9 assertion. 10 Q. The first thing I'm going to ask you is when the 11 conversations took place, then I'm going to ask you 12 who participated in the conversations, and then I'm 13 going to ask you what was discussed; okay? So we'll 14 -- we can get two of the three and perhaps three out 15 of the three. 16 MR. MILLER: Unlikely. 17 Q. So with regard to this line of questioning, between 18 July -- June 14 and July -- what was the filing date? 19 The 18th or 19th? 20 MR. RUEGGER: The 18th. 21 Q. And July 18th, when was the first conversation you had 22 with representatives -- when was the first 23 conversation you had with representatives of the City 24 with regard to Detroit's Chapter 9 bankruptcy filing? 25 A. I can only recall one conversation during that time</p>
<p style="text-align: right;">Page 102</p> <p>1 conversations with anybody at the City with regard to 2 Detroit filing for Chapter 9 protection? 3 A. Yes. 4 Q. During that time period did you have any conversations 5 with representatives of the City at which the State 6 were present -- at which representatives of the State 7 were present with regard to Detroit filing for Chapter 8 9 bankruptcy protection? 9 A. I don't recall. 10 Q. Between June 14 and July 17, what was the first 11 conversation that you had with anybody from the City 12 with regard to filing for Chapter 9 bankruptcy 13 protection on July 19? 14 MR. MILLER: Mr. Moore, in connection with 15 that question be careful to consider not revealing 16 attorney-client communications to the extent that 17 those conversations may have included attorneys. 18 MS. LEVINE: Wait, let's clarify that for a 19 second. How is it that if he's present there's an 20 attorney-client privilege if he did not sign an 21 engagement letter with Jones Day but signed it 22 directly with the City and the State? 23 MR. MILLER: He's the -- he and 24 Conway MacKenzie are the City's professional advisors 25 and Jones Day is taking the position that the</p>	<p style="text-align: right;">Page 104</p> <p>1 period. 2 Q. And what was the date? 3 A. I don't know the date. 4 Q. Was it in June or was it in July? 5 A. I honestly don't know. 6 Q. Do you recall who participated -- wait, who 7 participated in that conversation? 8 A. The conversation which I'm recalling was with Sonya 9 Mays. 10 Q. What's her title? 11 A. She is -- I believe her title is strategic advisor to 12 Kevyn Orr. 13 Q. And what was -- were there lawyers present during that 14 conversation? 15 A. No. 16 Q. What did you and she discuss? 17 A. She had asked me what I thought the potential was that 18 the City was going to have to file. 19 Q. And what was your answer? 20 A. I think I said I don't know and I gave a few reasons 21 why the City may not have to and a few reasons why the 22 City may have to. 23 Q. During the period of June 14 through July 17, was 24 Conway MacKenzie at all involved in preparing the 25 filings for the July 18th Chapter 9 filing?</p>

<p style="text-align: right;">Page 105</p> <p>1 A. Can you define filings?</p> <p>2 Q. Pleadings that were filed on the docket in connection</p> <p>3 with the Chapter 9 filing including, for example, your</p> <p>4 declaration.</p> <p>5 A. Only one and that is my declaration.</p> <p>6 Q. And what was the -- what was the date of the first</p> <p>7 meeting you had -- actually let me say this</p> <p>8 differently.</p> <p>9 What was the date of the first discussion</p> <p>10 you had with regard to preparing that declaration?</p> <p>11 A. I don't recall.</p> <p>12 Q. Was it in June?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Was it in July?</p> <p>15 A. I would assume so, yes.</p> <p>16 Q. Was it before the actual filing occurred?</p> <p>17 A. Yes.</p> <p>18 Q. Was it a week before the actual filing occurred?</p> <p>19 A. It may have been, I don't recall.</p> <p>20 Q. Was it more than ten days before the actual filing</p> <p>21 occurred?</p> <p>22 A. It may have been.</p> <p>23 Q. Was it before or after the July 4th weekend?</p> <p>24 MR. MILLER: If you recall.</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 107</p> <p>1 A. I don't recall.</p> <p>2 Q. How long before you had this initial conversation were</p> <p>3 you provided with a first draft of your declaration?</p> <p>4 A. I don't recall how long.</p> <p>5 Q. Was it more than a week?</p> <p>6 A. I don't recall.</p> <p>7 Q. Was it more than two weeks?</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you read -- did you have your declaration -- did</p> <p>10 you review your declaration over the July 4th weekend?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did you have the declaration as of the July 4th</p> <p>13 weekend?</p> <p>14 A. I don't recall.</p> <p>15 MR. MILLER: Wait. Objection. Object to</p> <p>16 form. Asked and answered.</p> <p>17 Q. When did you sign your declaration?</p> <p>18 A. I can't recall if it was July 17th or 18th.</p> <p>19 Q. And how many drafts did it go through before you</p> <p>20 actually signed it?</p> <p>21 A. I don't recall that.</p> <p>22 Q. More than one?</p> <p>23 A. Yes.</p> <p>24 Q. More than three?</p> <p>25 A. Could have been.</p>
<p style="text-align: right;">Page 106</p> <p>1 MS. LEVINE: Let's not coach the witness.</p> <p>2 Q. Did you receive -- after having the initial</p> <p>3 conversation -- was that initial conversation with</p> <p>4 Jones Day?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Did you receive a draft of your declaration to review?</p> <p>7 MR. MILLER: You can answer that question.</p> <p>8 A. At some point I received a draft, but I recall having</p> <p>9 an initial conversation first with an attorney from</p> <p>10 Jones Day laying out a number of the key issues</p> <p>11 relating to pensions.</p> <p>12 Q. When was that conversation?</p> <p>13 A. I don't recall.</p> <p>14 Q. Who participated in it?</p> <p>15 A. An attorney from Jones Day.</p> <p>16 Q. Do you recall the name of the attorney?</p> <p>17 A. I actually don't at this point.</p> <p>18 Q. Was anybody else on the phone with you from Conway?</p> <p>19 A. No, ma'am.</p> <p>20 Q. Was anybody else on the phone with you from the City?</p> <p>21 A. No.</p> <p>22 Q. Was anybody else on the phone with you?</p> <p>23 A. Just the attorney from Jones Day.</p> <p>24 Q. Did that conversation take place after the July 4th</p> <p>25 weekend?</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. More than five?</p> <p>2 A. I don't know.</p> <p>3 Q. No or you don't know?</p> <p>4 A. I don't know.</p> <p>5 Q. More than ten?</p> <p>6 MR. MILLER: Objection, asked and answered.</p> <p>7 MS. LEVINE: No, it's not. It's absolutely</p> <p>8 not and when he -- and it's almost, to be honest,</p> <p>9 inconceivable that he has no recollection of whether</p> <p>10 it took a day, two days or a month to prepare the</p> <p>11 declaration or when he first learned of the bankruptcy</p> <p>12 filing.</p> <p>13 MR. MILLER: That mischaracterizes his</p> <p>14 testimony. We can go over his testimony, if you would</p> <p>15 like.</p> <p>16 MS. LEVINE: We will after we finish it.</p> <p>17 Can you read back my question, please?</p> <p>18 (Record read back as requested.)</p> <p>19 THE WITNESS: Could you go back? More than</p> <p>20 ten what?</p> <p>21 (Record read back as requested.)</p> <p>22 A. I don't think it would be more than ten.</p> <p>23 Q. Prior to the time that Detroit filed for Chapter 9</p> <p>24 protection, did you become aware of the Flowers</p> <p>25 litigation?</p>



<p style="text-align: right;">Page 109</p> <p>1 A. Could you be more specific on Flowers litigation?</p> <p>2 Q. Have you heard the term the Flowers litigation before?</p> <p>3 A. Ms. Levine, I come across so much on a day-to-day</p> <p>4 basis. I need something more to spur my memory to</p> <p>5 know whether I've heard of it or not.</p> <p>6 Q. Does the name Webster litigation mean anything to you?</p> <p>7 A. Again, if you could please provide a little bit more</p> <p>8 detail, I can tell you if I've heard of it or not.</p> <p>9 Q. What's your understanding of the reason why Detroit</p> <p>10 determined to file for Chapter 9 protection on July 18</p> <p>11 as opposed to some other day?</p> <p>12 A. I don't have an under --</p> <p>13 MR. MILLER: Object to form.</p> <p>14 A. I don't have an understanding. I was not involved in</p> <p>15 that decision.</p> <p>16 Q. So after you -- so when you first learned that you</p> <p>17 were going to do a declaration, was it your</p> <p>18 understanding that Detroit had already made the</p> <p>19 decision to file in July?</p> <p>20 A. No.</p> <p>21 Q. When you first started working on your declaration,</p> <p>22 was it in anticipation of a specific filing date?</p> <p>23 A. No. Just add too I've had a number of clients where I</p> <p>24 have prepared something -- a pleading for a potential</p> <p>25 bankruptcy filing that has never happened.</p>	<p style="text-align: right;">Page 111</p> <p>1 working on my declaration, I don't know.</p> <p>2 Q. Did you begin preparing your declaration at or about</p> <p>3 the same time you became aware of the state court</p> <p>4 litigation?</p> <p>5 A. I don't know.</p> <p>6 Q. Was it months before you became aware of the state</p> <p>7 court litigation?</p> <p>8 MR. MILLER: Object to form.</p> <p>9 A. Ms. Levine, I think I've already answered that I don't</p> <p>10 believe that there was anything done preparation wise</p> <p>11 on my declaration in the month of June.</p> <p>12 Q. Okay.</p> <p>13 Were you involved in any restructuring</p> <p>14 initiatives in or about February of 2013 with regard</p> <p>15 to the removal of blighted homes in the City of</p> <p>16 Detroit?</p> <p>17 A. Was I specifically involved or was Conway MacKenzie</p> <p>18 involved?</p> <p>19 Q. Well, starting with you and then we're going to ask</p> <p>20 about Conway MacKenzie.</p> <p>21 A. Blight has been an area of focus that our firm has had</p> <p>22 and I have been involved in some of those activities.</p> <p>23 Q. Were you point on the issue with regard to the</p> <p>24 blighted homes?</p> <p>25 A. Generally speaking there was another individual on the</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. Were you aware of any litigation pending just prior to</p> <p>2 the Chapter 9 filing with regard to the question of</p> <p>3 authorization for the City to actually file a Chapter</p> <p>4 9 petition?</p> <p>5 MR. MILLER: Object to form.</p> <p>6 A. I am generally aware --</p> <p>7 MS. LEVINE: Wait, what's the form</p> <p>8 objection?</p> <p>9 MR. MILLER: Vague and ambiguous with</p> <p>10 respect to the question of authorization for the City</p> <p>11 to actually file a Chapter 9 petition and foundation.</p> <p>12 Q. Prior to the time of the bankruptcy filing were you</p> <p>13 aware that there was litigation pending challenging</p> <p>14 the authorization for the City to file for Chapter 9</p> <p>15 protection?</p> <p>16 A. I am generally aware of litigation filed in a state</p> <p>17 court where I believe that that was one of the</p> <p>18 elements of the litigation.</p> <p>19 Q. When did you first become aware of that state court</p> <p>20 litigation?</p> <p>21 A. Sometime within the week before the actual filing</p> <p>22 perhaps.</p> <p>23 Q. Did you -- had you prepared your declaration before or</p> <p>24 after you became aware of that state court litigation?</p> <p>25 A. Because I can't recall specifically when I started</p>	<p style="text-align: right;">Page 112</p> <p>1 team that I delegated some items to.</p> <p>2 Q. And with -- and on the other side of that, who was the</p> <p>3 point person for the State on that issue?</p> <p>4 MR. MILLER: Objection to form, foundation.</p> <p>5 Q. Did you contact -- were you in contact with the State</p> <p>6 with regard to this issue?</p> <p>7 A. There have been numerous people at the State with whom</p> <p>8 blight has been discussed.</p> <p>9 Q. Do you recall who was the point person for that</p> <p>10 initiative?</p> <p>11 A. From the State?</p> <p>12 Q. Yes.</p> <p>13 A. I don't know if the State actually has a point person</p> <p>14 for blight. There is the Michigan -- Michigan State</p> <p>15 Housing Development Agency or Authority, MSHDA, that</p> <p>16 is involved with some of these activities. Treasury</p> <p>17 department has had some involvement. The department</p> <p>18 that Moore Corrigan heads up, which I can't recall the</p> <p>19 name of it right now, has been involved.</p> <p>20 (Marked Exhibit No. 12.)</p> <p>21 Q. I'm going to show you what's been marked Moore 12 for</p> <p>22 identification. It's an email chain but the second</p> <p>23 email has three CCs with Michigan email addresses and</p> <p>24 I was just wondering if you recognize those names and</p> <p>25 could identify those people. Document number</p>



<p style="text-align: right;">Page 113</p> <p>1 DTMI00103661.</p> <p>2 A. Ms. Levine, you're referring to these three names?</p> <p>3 Q. Right.</p> <p>4 A. And the question is do I recognize the names?</p> <p>5 Q. Yes. I'm going to ask you to identify who they are.</p> <p>6 A. I recognize one for sure and two other people I'm</p> <p>7 generally aware of, but I don't know their specific</p> <p>8 roles.</p> <p>9 Q. Right, who's the first one? Just so the record's</p> <p>10 clear can you tell us the name of the first person</p> <p>11 that you do recognize and what their title is?</p> <p>12 A. The email address is --</p> <p>13 Q. No, no, no, I'm asking you the person's name.</p> <p>14 A. There's not a name on here, Ms. Levine.</p> <p>15 Q. No, I'm asking you if you recognize the name.</p> <p>16 MR. MILLER: From the email address.</p> <p>17 Q. Does the email address trigger a name? I want to find</p> <p>18 out who the person is, then I'm going to ask you what</p> <p>19 their involvement was with regard to the blighted</p> <p>20 homes.</p> <p>21 A. Just so we're clear for the record, Ms. Levine, you've</p> <p>22 given me an email address that is only the address and</p> <p>23 not the name and I'm going to speculate as to who that</p> <p>24 relates to.</p> <p>25 MR. MILLER: Don't speculate.</p>	<p style="text-align: right;">Page 115</p> <p>1 A. No.</p> <p>2 Q. Do you know his title?</p> <p>3 A. No, I don't know his title.</p> <p>4 Q. Okay, thank you.</p> <p>5 (Marked Exhibit No. 13.)</p> <p>6 Q. I'm going to show you what's been marked Moore 13. Do</p> <p>7 you recognize this document?</p> <p>8 A. This appears to be a document that was used in the</p> <p>9 presentation to the financial advisory board in March</p> <p>10 of 2013.</p> <p>11 Q. Did you prepare this document?</p> <p>12 A. I assisted in preparing some of it.</p> <p>13 Q. Did you prepare the summary of Conway MacKenzie</p> <p>14 engagement next steps that appears on page 14?</p> <p>15 A. I would have reviewed this.</p> <p>16 Q. What is your understanding of the meaning under the</p> <p>17 very last bullet point of legal limitations?</p> <p>18 MR. MILLER: Wait a moment. You're moving</p> <p>19 too fast for me. We're on page 12, summary of</p> <p>20 Conway MacKenzie.</p> <p>21 MS. LEVINE: No, we're on page 14.</p> <p>22 MR. MILLER: Sorry, that's why I asked.</p> <p>23 And the pending question? Can you read it back?</p> <p>24 (Record read back as requested.)</p> <p>25 A. That was referring to constraints that were faced</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Don't speculate.</p> <p>2 MR. MILLER: Don't speculate. If you know</p> <p>3 the name, identify the name.</p> <p>4 Q. It's not a trick question. If the answer is I have no</p> <p>5 clue who this person is -- for example, if it says</p> <p>6 rbaird, there's a pretty good idea we know who it is.</p> <p>7 I don't recognize those names, I'm asking you to help</p> <p>8 me out. If the answer is I don't know who they are,</p> <p>9 then you don't know who they are.</p> <p>10 A. muchmored is probably Dennis Muchmore.</p> <p>11 Q. And what's his title?</p> <p>12 A. I think his title is chief of staff for the governor.</p> <p>13 Q. And was he involved in this project with regard to</p> <p>14 blighted homes?</p> <p>15 A. I've never had any conversations with Dennis.</p> <p>16 MR. MILLER: Object to form.</p> <p>17 Q. Okay, what's the next one?</p> <p>18 A. Allison Scott.</p> <p>19 Q. Yes. And have you had conversations with her?</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you know her title?</p> <p>22 A. No, I don't.</p> <p>23 Q. What's the last name?</p> <p>24 A. Harvey Hollins.</p> <p>25 Q. Have you had conversations with him?</p>	<p style="text-align: right;">Page 116</p> <p>1 related to some of the HR related items that we were</p> <p>2 looking at and specifically the inability to move out</p> <p>3 individuals that we felt should be removed from</p> <p>4 whichever department they were working in.</p> <p>5 Q. Did this relate to unionized employees?</p> <p>6 A. Yes.</p> <p>7 Q. So was there a concern -- never mind.</p> <p>8 Did this legal limitations relate to</p> <p>9 constraints with regard to privatization?</p> <p>10 MR. MILLER: Object to form.</p> <p>11 A. Not that I recall.</p> <p>12 (Marked Exhibit No. 14.)</p> <p>13 Q. Do you recognize this document?</p> <p>14 A. This appears to be our assessment of the restructuring</p> <p>15 -- proposed restructuring of city council department.</p> <p>16 Q. Who asked you to prepare this?</p> <p>17 A. First the City obviously engaged us to conduct a</p> <p>18 review and identify recommendations for departments.</p> <p>19 This was specifically put together because the</p> <p>20 financial advisory board at the March meeting asked us</p> <p>21 to bring in a couple of departments in April and</p> <p>22 present on restructuring activities there.</p> <p>23 Q. Did you prepare more than one of these reports?</p> <p>24 A. This report that you handed me appears to be the</p> <p>25 longer version for the financial advisory board</p>



<p>Page 117</p> <p>1 meeting I believe that this was summarized.</p> <p>2 Q. Prior to this report, which makes reference to</p> <p>3 restructuring pensions and OPEB, had you previously</p> <p>4 considered or made recommendations with regard to</p> <p>5 restructuring pensions and OPEB?</p> <p>6 MR. MILLER: Object to form.</p> <p>7 A. Where are you referring to that this makes reference</p> <p>8 to restructuring pension and OPEB?</p> <p>9 Q. Well, let me ask the question a different way.</p> <p>10 Does this report suggest restructuring</p> <p>11 pension and OPEB?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. Did you discuss with the city council</p> <p>14 restructuring recommendations that included pension</p> <p>15 and OPEB?</p> <p>16 MR. MILLER: Object to form.</p> <p>17 Q. Prior to the Chapter 9 filing did you discuss with the</p> <p>18 city council restructuring recommendations that</p> <p>19 included pension and OPEB?</p> <p>20 A. No.</p> <p>21 Q. When was the first -- did you ever discuss with the</p> <p>22 city council recommendations for pensions and OPEB?</p> <p>23 A. No.</p> <p>24 (Marked Exhibit No. 15.)</p> <p>25 Q. I'm going to show you what's been marked Moore 15.</p>	<p>Page 119</p> <p>1 OPEB restructuring?</p> <p>2 MR. MILLER: Object to form.</p> <p>3 A. When I came -- when I was first engaged, the City had</p> <p>4 already started a process related to healthcare for</p> <p>5 both active and retired employees at various cost</p> <p>6 reduction efforts and the pension topics I believe</p> <p>7 began maybe in the beginning of March or thereabouts.</p> <p>8 Q. In connection with the work that you did with regard</p> <p>9 to pension and OPEB, did you review the City's history</p> <p>10 with regard to negotiations with the unions with</p> <p>11 regard to the OPEB issues?</p> <p>12 A. When you say history, are you referring to recent</p> <p>13 history or what period of time?</p> <p>14 Q. Prior to your engagement, what was the last time that</p> <p>15 the City entered into concessionary agreements with</p> <p>16 its unions or concessionary negotiation with its</p> <p>17 unions just prior?</p> <p>18 MR. MILLER: Objection to form, foundation.</p> <p>19 A. Just to clarify, Ms. Levine, I am not the primary</p> <p>20 point person on OPEB. I certainly have participated</p> <p>21 in meetings where OPEB has been discussed. My</p> <p>22 understanding is that the most recent time related to</p> <p>23 changes in healthcare would have been the</p> <p>24 implementation of the City Employment Terms during</p> <p>25 2012.</p>
<p>Page 118</p> <p>1 MR. MILLER: Yes.</p> <p>2 MS. LEVINE: Sorry, I gave you my copy too.</p> <p>3 Q. Do you recall seeing that document before today?</p> <p>4 A. Yes.</p> <p>5 Q. What is it?</p> <p>6 A. This appears to be the presentation document for the</p> <p>7 financial advisory board meeting on April 8th.</p> <p>8 Q. Okay, would you turn to page 12, please? I'm reading</p> <p>9 from the bottom of the page CM -- which I'm assuming</p> <p>10 is an abbreviation for Conway MacKenzie; is that</p> <p>11 correct?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. -- is also working on various work streams that span</p> <p>14 across the City or multiple departments including</p> <p>15 pension and OPEB restructuring.</p> <p>16 Do you see where I'm reading?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Does that refresh your recollection with regard to</p> <p>19 whether or not you were working on pension and OPEB</p> <p>20 restructuring?</p> <p>21 A. I don't believe you asked me that before.</p> <p>22 Q. Were you during this time period working on pension</p> <p>23 and OPEB restructuring?</p> <p>24 A. Yes.</p> <p>25 Q. When did you first raise with the City pension and</p>	<p>Page 120</p> <p>1 Q. Are you familiar with those employment terms?</p> <p>2 A. Generally.</p> <p>3 Q. Okay. Were there OPEB concessions made as part of</p> <p>4 those terms?</p> <p>5 A. I don't recall if the changes to the actives were</p> <p>6 pushed through to retired employees or not.</p> <p>7 Q. Did your role with regard to the pensions increase</p> <p>8 over -- at any point in time in April?</p> <p>9 A. I don't know about during the month of April. It may</p> <p>10 have been in April, but essentially as pension issues</p> <p>11 certainly became a focal point, there was the</p> <p>12 establishment of a task force and I was asked by</p> <p>13 Kriss Andrews to lead that task force.</p> <p>14 Q. Did Milliman participate in that task force?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Who else participated in that task force?</p> <p>17 A. Attorneys from Jones Day and Miller Canfield.</p> <p>18 Q. And what exactly was the role of the pension task</p> <p>19 force?</p> <p>20 A. I believe it states in my declaration, but essentially</p> <p>21 we were to look at causes of the underfunding,</p> <p>22 evaluate the underfunding amount and options that may</p> <p>23 exist as it relates to the defined benefit pension</p> <p>24 plans.</p> <p>25 Q. Was there -- was any -- was anybody on behalf of the</p>

<p style="text-align: right;">Page 121</p> <p>1 City who was not a consultant participating in the</p> <p>2 task force?</p> <p>3 A. Initially I reported to Kriss Andrews and then upon</p> <p>4 Kriss' departure I now report to Sonya Mays as the</p> <p>5 point person for pension related issues.</p> <p>6 Q. Does anybody who's not a consultant participate on</p> <p>7 behalf of -- actually let me take that back.</p> <p>8 Does anybody participate on behalf of the</p> <p>9 State?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Has the task force reported to the State?</p> <p>12 A. I have been in meetings where people from the City and</p> <p>13 the State have been present where questions have been</p> <p>14 asked about pensions where I have provided answers.</p> <p>15 Q. Since April 18th forward how many meetings have you</p> <p>16 participated as a member of the pension task force</p> <p>17 where representatives of the State were present?</p> <p>18 MR. MILLER: Object to form.</p> <p>19 MS. LEVINE: What?</p> <p>20 MR. MILLER: It assumes that --</p> <p>21 MS. LEVINE: Actually never mind.</p> <p>22 Q. Go ahead, you can answer.</p> <p>23 A. Just to clarify, the task force itself did not meet</p> <p>24 with the State. The State was involved in meetings</p> <p>25 with the City where pension topics would be asked and</p>	<p style="text-align: right;">Page 123</p> <p>1 A. I thought I did, but can you please read it back?</p> <p>2 Q. I'll do it a different way.</p> <p>3 You testified you had various meetings at</p> <p>4 which unions were present and you discussed pensions.</p> <p>5 Were every single one of those meetings related to</p> <p>6 your work on the as being force?</p> <p>7 A. No.</p> <p>8 Q. How many meetings did you have with union</p> <p>9 representatives in connection with the task force?</p> <p>10 A. I spoke to individuals, union members, related to the</p> <p>11 pensions maybe five to seven times.</p> <p>12 Q. And when did those meetings take place?</p> <p>13 A. Between April and July 18th, which is the time period</p> <p>14 that you were referring to.</p> <p>15 Q. And those five to seven meetings, who was on the other</p> <p>16 side of those meetings?</p> <p>17 A. Most of my interaction was with members of the Police</p> <p>18 and Fire Retirement System board.</p> <p>19 Q. And who on the Police and Fire Retirement System board</p> <p>20 did you speak to?</p> <p>21 A. George Orzech and Mark Diaz.</p> <p>22 Q. And what did you talk about with George Orzech and</p> <p>23 Mark Diaz?</p> <p>24 A. The conversations would have been anywhere from this</p> <p>25 is what I'm doing with the pension task force, this is</p>
<p style="text-align: right;">Page 122</p> <p>1 I would provide answers to pension related topics, but</p> <p>2 the task force to the best of my knowledge never met</p> <p>3 specifically with the State.</p> <p>4 Q. Well, did the task force have a goal? In other words,</p> <p>5 did it have a deliverable it was supposed to provide</p> <p>6 to the City?</p> <p>7 A. The first item that we were looking at was done in</p> <p>8 conjunction with the projections and restructuring</p> <p>9 plan and that was to identify what the potential</p> <p>10 unfunded amount of the pension plans may be and what</p> <p>11 the future contribution requirements to both plans may</p> <p>12 be.</p> <p>13 Q. In connection with your work with the task force, did</p> <p>14 you or anybody else on the task force meet with union</p> <p>15 representatives?</p> <p>16 A. In the course of my involvement with the City I've had</p> <p>17 a lot of meetings with union people where pension</p> <p>18 topics have come up.</p> <p>19 MS. LEVINE: Can you read back my question,</p> <p>20 please?</p> <p>21 (Record read back as requested.)</p> <p>22 Q. So can you answer that narrow question, please?</p> <p>23 MR. MILLER: Objection, asked and answered.</p> <p>24 MS. LEVINE: No, he --</p> <p>25 Q. Can you answer that narrow question?</p>	<p style="text-align: right;">Page 124</p> <p>1 what we're seeing, and then answering questions that</p> <p>2 they had as a result of the June 14th creditor plan.</p> <p>3 Q. Okay, when you talked to them about this is what you</p> <p>4 were doing, what did you tell them you were doing?</p> <p>5 A. I indicated that we were performing some analyses</p> <p>6 related to the pensions to try to get our arms around</p> <p>7 the funded position and most importantly the future</p> <p>8 contribution requirements.</p> <p>9 Q. And when you say we, who are you referring to?</p> <p>10 A. The task force.</p> <p>11 Q. That included Milliman?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And when you said what you were finding, what did you</p> <p>14 tell them you were finding?</p> <p>15 A. Well, I expressed quite a bit of shock as to some of</p> <p>16 the practices that had taken place and questioning how</p> <p>17 these things could have happened along with the nature</p> <p>18 of some of the indictments of the trustees that had</p> <p>19 happened.</p> <p>20 Q. What time frame are you talking about?</p> <p>21 A. For what?</p> <p>22 Q. For the shock that you were -- for the conduct that</p> <p>23 you found shocking.</p> <p>24 A. Well, I began my activities on the pension in March, I</p> <p>25 started to get shocked in March and --</p>

<p style="text-align: right;">Page 125</p> <p>1 Q. No, no, I'm asking when did the -- you know, was the 2 conduct happening in March and April? 3 A. Not that I saw. 4 Q. Okay, when -- so the conduct was historical. Did you 5 give them any information with regard to current 6 findings with regard to the status of the pensions? 7 MR. MILLER: Object to form. 8 A. We discussed after the June 14th meeting the 9 information presented in that June 14th creditor plan. 10 Q. How many times did you discuss it with them? 11 A. A handful. I would say five perhaps, maybe under. 12 Q. And how long did those discussions take place? 13 A. Typically fairly brief conversations. Fifteen 14 minutes. 15 Q. They had questions and you gave them just answers? 16 A. Generally speaking, yes. 17 Q. And what did you discuss in those conversations post 18 June 14? 19 A. I think I've already answered, but essentially they 20 would ask questions about the calculations, what the 21 City was looking to do, is the City open to this type 22 of idea? And generally speaking my answer was always, 23 we're open to looking at anything. 24 Q. What specific ideas did they offer to you to look at? 25 A. One was a hybrid plan. Two was whether the pension</p>	<p style="text-align: right;">Page 127</p> <p>1 certainly as employees through the development of the 2 restructuring plans by departments. 3 Q. So did you talk to anybody -- did you talk to Steve 4 Kreisberg, for example, with regard to the preparation 5 of the June 14 proposal? 6 A. No, ma'am. 7 Q. Following the presentation on June 14 did you talk to 8 anybody from AFSCME with regard to the content of the 9 proposal? 10 A. Outside of those meetings, no, the meetings that we 11 referred to earlier, June 14th, June 20th, July 10th. 12 Q. Did you reach out to anybody from AFSCME to get 13 feedback from them with regard to that proposal? 14 A. No, ma'am. 15 MS. LEVINE: I think I'm done. I have no 16 further questions. Thank you. 17 MR. RUEGGER: Take a five-minute break. 18 MR. MILLER: Let's take a five-minute 19 break. 20 (A brief recess was taken.) 21 MR. MILLER: Back on the record. 22 EXAMINATION 23 BY MR. CIANTRA: 24 Q. Good afternoon, Mr. Moore. I'm Thomas Ciantra, I'm 25 with Cohen Weiss and Simon, I'm counsel to the UAW.</p>
<p style="text-align: right;">Page 126</p> <p>1 would not be frozen -- this is again referring to the 2 Police and Fire, that the pension would not be frozen. 3 I think that those were a few of the ideas that I 4 recall. 5 Q. Did you have any conversations with anybody from 6 AFSCME during that same time period? 7 A. Not that I recall. Outside of the meetings that I 8 referred to earlier. 9 Q. So the June 14th and June 20th, the July 10th and the 10 July 11th meeting? 11 A. Yes, although I was not at the July 11th meeting. 12 Q. Did you make any effort to reach out to anybody from 13 AFSCME prior to finalizing the June 14 proposal? 14 A. This actually goes back a little bit, but during 2012 15 when you discussed obviously previous efforts or 16 activities that my firm had made to try to offer our 17 assistance to the City, we had reached out to AFSCME 18 at that time because we had previously done work with 19 AFSCME and unfortunately I left a few messages but 20 AFSCME never called back. 21 Q. I'll try again. 22 In connection with the June 14 proposal did 23 you reach out to anybody from AFSCME with regard to 24 input into that proposal? 25 A. In the role specifically related to AFSCME, no, but</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Good afternoon. 2 Q. Let me go back just a little bit in terms of your 3 background. You had indicated that back in or around 4 2007, 2008 you were named to a commission to look at 5 governmental operations here in the State of Michigan? 6 A. Yes, sir. 7 Q. And as I understand it, that appointment was made by 8 the then speaker of the Michigan house of 9 representatives, Mr. Dillon, and the majority leader 10 of the Michigan senate; is that correct? 11 A. Yes, sir, Mike Bishop. 12 Q. Okay. Had you known Mr. Dillon before that 13 appointment? 14 A. No. 15 Q. Or Mr. Bishop? 16 A. No. 17 Q. And at that time had you actually done any work in 18 terms of restructuring of governmental operations? 19 A. Yes, sir, I had been involved in my engagement with 20 the Wayne County Circuit Court. 21 Q. Okay. And the Wayne County Circuit Court and you had 22 mentioned that you had done some work for the Detroit 23 Public School System? 24 A. Yes. 25 Q. Those are your -- that's your governmental</p>



<p style="text-align: right;">Page 129</p> <p>1 restructuring responsibility?</p> <p>2 A. No, I've had additional engagements that I mentioned</p> <p>3 earlier as well.</p> <p>4 Q. The Development Bank in Puerto Rico?</p> <p>5 A. Yes, and then work on behalf of AFSCME and the UAW</p> <p>6 related to Puerto Rico.</p> <p>7 Q. To Puerto Rico, okay.</p> <p>8 A. And Jefferson County Alabama.</p> <p>9 Q. Right. There had been a number of -- or several</p> <p>10 Michigan municipalities that have had either a</p> <p>11 Financial Manager or an Emergency Manager appointed in</p> <p>12 the past several years; is that correct?</p> <p>13 A. I believe the number is somewhere between five and</p> <p>14 seven.</p> <p>15 Q. Okay, is Flint who's one of them?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Benton Harbor?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Has the county -- has your firm been involved in any</p> <p>20 of those cases?</p> <p>21 A. No.</p> <p>22 Q. And you haven't?</p> <p>23 A. Correct.</p> <p>24 Q. Now, you indicated -- do you have your declaration</p> <p>25 handy? I think it's been marked as Exhibit 1.</p>	<p style="text-align: right;">Page 131</p> <p>1 that are addressed to Mr. Miller, your counsel here</p> <p>2 today. The first one that I have is from April 18th,</p> <p>3 2013 and you're copied on those letters. Are you</p> <p>4 familiar with them?</p> <p>5 A. Generally, yes. There are, as you say, a number of</p> <p>6 them. I would have to remember what specifically was</p> <p>7 discussed in that one.</p> <p>8 Q. Okay. There were -- as a general matter, they seem to</p> <p>9 involve analyses of particular scenarios that were put</p> <p>10 to them?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Who -- were those scenarios developed by the</p> <p>13 task force that you were part of?</p> <p>14 A. Yes.</p> <p>15 Q. And who would have had -- who would have been the</p> <p>16 decider as it were with respect to what the Milliman</p> <p>17 firm was tasked to do?</p> <p>18 A. The task force would lay out scenarios and I would</p> <p>19 communicate with Kriss Andrews updates as to what the</p> <p>20 task force was looking to do and then as Mr. Andrews</p> <p>21 transitioned out, the tasks given to Milliman were</p> <p>22 covered with Mr. Orr and Sonya Mays.</p> <p>23 Q. Okay. Let me start by --</p> <p>24 MR. CIANTRA: I don't know, what's the next</p> <p>25 number we're up to?</p>
<p style="text-align: right;">Page 130</p> <p>1 A. Yes.</p> <p>2 Q. And in paragraph 5 you mention your work analyzing the</p> <p>3 City of Detroit's pension liabilities and you've</p> <p>4 testified with respect to the task force that you were</p> <p>5 a part of that looked at that?</p> <p>6 A. Paragraph 5 --</p> <p>7 Q. I'm sorry, paragraph 8. If you'll excuse me, I got up</p> <p>8 at 4 o'clock this morning to get here so I'm going to</p> <p>9 be a little slower than Ms. Levine. Okay.</p> <p>10 A. Could you restate the question?</p> <p>11 Q. Sure. Who tasked you to be involved in looking at the</p> <p>12 City's pension liabilities?</p> <p>13 A. Kriss Andrews.</p> <p>14 Q. And that was you said in March or so of 2013?</p> <p>15 A. I think that's right, yes.</p> <p>16 Q. Now, there were a series of -- well, let me ask.</p> <p>17 Was the Milliman firm working for the City</p> <p>18 of Detroit at that time?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Do you know when they were retained?</p> <p>21 A. I don't.</p> <p>22 Q. But they were in place at the time you were given this</p> <p>23 assignment by Mr. Andrews?</p> <p>24 A. Yes.</p> <p>25 Q. There are a series of letters from the Milliman firm</p>	<p style="text-align: right;">Page 132</p> <p>1 MR. MILLER: Sixteen.</p> <p>2 (Marked Exhibit No. 16.)</p> <p>3 Q. Here's what I marked as 16.</p> <p>4 Now, why don't you take a moment or two,</p> <p>5 however long you wish, Mr. Moore, to look over that</p> <p>6 letter, number 16, Moore Exhibit 16.</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. I gather from the first paragraph that your</p> <p>9 task force asked the Milliman firm to determine the</p> <p>10 adjusted funded status under PA 436, Section 12(1)(M)</p> <p>11 for the two pension systems reflecting the value of</p> <p>12 the pension operating certificates?</p> <p>13 A. Just to be --</p> <p>14 MR. MILLER: I'll object to form.</p> <p>15 MR. CIANTRA: What's the basis of the</p> <p>16 objection?</p> <p>17 MR. MILLER: No foundation.</p> <p>18 Q. Well, did you ask -- did your task force ask the</p> <p>19 Milliman firm to determine the adjusted funded status</p> <p>20 under PA 436, Section 12(1)(M), for the two Retirement</p> <p>21 Systems reflecting the value of the pension obligation</p> <p>22 certificates?</p> <p>23 A. The only clarification I was going to provide in my</p> <p>24 answer is yes, we asked Milliman to calculate the</p> <p>25 funded status pursuant to 12(1)(M) of PA 436. That</p>

<p style="text-align: right;">Page 133</p> <p>1 does include an adjustment for pension obligation</p> <p>2 bonds or pension obligation certificates which they</p> <p>3 did in their calculation, but it was simply a request</p> <p>4 to calculate the funded status under 12(1)(M).</p> <p>5 Q. Okay, and why was that done?</p> <p>6 A. At this point the City was operating under an</p> <p>7 Emergency Manager pursuant to PA 436.</p> <p>8 Q. Right.</p> <p>9 A. And it was important that we had that piece of</p> <p>10 information.</p> <p>11 Q. Why was that important?</p> <p>12 A. That is one item that the Emergency Manager has to</p> <p>13 look at while operating as the Emergency Manager and</p> <p>14 so that's obviously you need to calculate that in</p> <p>15 order to carry out his duties.</p> <p>16 Q. And there's a particular threshold in that provision</p> <p>17 of the statute, Section 12(1)(M), with respect to the</p> <p>18 funded status of a plan that is involved in the</p> <p>19 Emergency Manager's responsibilities?</p> <p>20 A. I believe you're referring to the 80 percent</p> <p>21 threshold?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, sir.</p> <p>24 Q. And if the funding of the plan is below the 80 percent</p> <p>25 threshold, the Emergency Manager is at liberty to</p>	<p style="text-align: right;">Page 135</p> <p>1 replaced?</p> <p>2 A. That is my understanding.</p> <p>3 Q. Were you involved in discussions as to whether that</p> <p>4 should be pursued or not?</p> <p>5 A. We have identified publicly one of the objectives that</p> <p>6 the task force has is to ensure good governance for</p> <p>7 both pension systems going forward and so one element</p> <p>8 of that could be looked at. As it relates to</p> <p>9 governance is a change in the composition of the Board</p> <p>10 of Trustees, no decisions have been made in that</p> <p>11 regard, but that certainly is something that has been</p> <p>12 talked about as one possible element of governance.</p> <p>13 Q. And that was -- so that was something that was -- was</p> <p>14 on the radar screen of your task force at least back</p> <p>15 in April?</p> <p>16 A. Yes, sir.</p> <p>17 MR. CIANTRA: Let me mark this as number</p> <p>18 17.</p> <p>19 (Marked Exhibit No. 17.)</p> <p>20 Q. This is another of a series of letters. This one is</p> <p>21 dated June 9th. It's also addressed to Mr. Miller.</p> <p>22 And you are -- you can check on, I guess, the fifth</p> <p>23 page of the document you appear to be copied on that.</p> <p>24 A. Yes, sir.</p> <p>25 Q. And am I correct that this letter reflects a further</p>
<p style="text-align: right;">Page 134</p> <p>1 remove the trustees of the plan?</p> <p>2 A. I don't recall the exact --</p> <p>3 MR. MILLER: Well, object to form. It</p> <p>4 calls for a legal conclusion.</p> <p>5 Q. I'm just asking your understanding of it. I</p> <p>6 understand you're not a lawyer, not an actuary, just</p> <p>7 your understanding. You were working on the task</p> <p>8 force, you asked these folks to look into this. What</p> <p>9 was your understanding of what the Emergency Manager</p> <p>10 could do if the funding threshold was below 80</p> <p>11 percent?</p> <p>12 A. I can't recall the exact language, whether the</p> <p>13 Emergency Manager can act or if the Emergency Manager</p> <p>14 can submit a petition or a request to the State</p> <p>15 treasurer, but yes, if a pension plan falls below that</p> <p>16 80 percent funded threshold, that allows that item to</p> <p>17 occur.</p> <p>18 Q. Okay. And I gather from Moore 16 that with respect at</p> <p>19 least to the General Retirement System, the conclusion</p> <p>20 of the Milliman firm as of April 19th was that its</p> <p>21 funded status was 61.49 percent?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Is it correct that the Emergency Manager has not taken</p> <p>24 any steps pursuant to Section 12(1)(M) of the statute</p> <p>25 to have the trustees of that Retirement System</p>	<p style="text-align: right;">Page 136</p> <p>1 analysis by Milliman of the issue we were just</p> <p>2 discussing with respect to the April 18th letter?</p> <p>3 A. Yes, 12(1)(M) calls for the calculation based on the</p> <p>4 last published actuarial valuation report, so between</p> <p>5 April 18th and June 9th the actuarial valuation report</p> <p>6 for the Police and Fire Retirement System was</p> <p>7 finalized for the fiscal year-ending June 30th, 2012.</p> <p>8 Q. So there we see on the first page that the funded</p> <p>9 status for that plan has, at least as reflected in</p> <p>10 that final valuation report, is also under 80 percent;</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Can you explain to me what the Milliman folks did with</p> <p>14 respect to the outstanding value of the pension</p> <p>15 obligation certificates when conducting this analysis?</p> <p>16 MR. MILLER: Object to form. It calls for</p> <p>17 speculation.</p> <p>18 Q. Well, what did you understand that they were asked to</p> <p>19 do with respect to the outstanding value of the</p> <p>20 pension obligation certificates with respect to this</p> <p>21 analysis?</p> <p>22 A. My understanding was that pursuant to 12(1)(M) that</p> <p>23 the funding calculation would take into account the</p> <p>24 outstanding balances of any pension obligation</p> <p>25 certificates as of the measurement date.</p>

<p style="text-align: right;">Page 137</p> <p>1 Q. And that outstanding balance would be subtracted from 2 the asset balance in the pension plan? 3 A. There are a couple of ways that you could do it, but 4 yes, if you subtract that from the assets. 5 Q. So it would be netted out in some way? 6 A. Yes, sir. 7 Q. I understand there are probably different ways that 8 one could do it and you would have to allocate them as 9 between the two plans, but the idea would be you would 10 look at the funded status by netting out the 11 outstanding balance of those pension obligation 12 certificates? 13 A. Yes, sir. 14 Q. And so when you do that, you -- I gather that you get 15 to the valuation -- the funded percentage that's shown 16 on the first page of the letter as opposed to the 17 funded percentages that are shown on the second page 18 of the letter for the two plans? 19 A. Yes, sir. 20 Q. And did the task force take a position as to whether 21 netting out the pension obligation certificates in the 22 manner that the Milliman firm did here was the 23 appropriate measure under the statute? 24 MR. MILLER: Object to form. 25 A. The task force looked at this and as I seem to recall</p>	<p style="text-align: right;">Page 139</p> <p>1 with the GRS; correct? 2 A. As it relates to the funded position, the first two 3 you mentioned, yes, were modified in our calculation 4 that I call out in the declaration. 5 Q. Okay. Is it the position -- has the task force looked 6 at the question of whether any of those assumptions 7 are inconsistent with actuarial standards of practice? 8 A. Yes, the task force has had discussions about the 9 range of options available for actuarial assumptions. 10 Q. Okay. Have you formed -- has the task force formed an 11 opinion that any of the assumptions that you identify 12 are inconsistent with actuarial standards of practice? 13 A. I'm not sure that I can answer that. That I think 14 calls for us to take one step further. 15 Q. Well, you participated in the task force meetings; 16 right? 17 A. Yes. 18 Q. So I'm just asking you a question of fact whether the 19 task force has taken or adopted a view that any of the 20 actuarial assumptions that you identified in your 21 prior testimony are contrary to actuarial standards of 22 practice? 23 MR. MILLER: I'll object to form. 24 Q. You can answer the question. 25 A. Could you define what you mean by contrary to</p>
<p style="text-align: right;">Page 138</p> <p>1 concluded that Milliman had performed the calculation 2 consistent with how 12(1)(M) is defined. 3 Q. Okay. So the percentages there on the first page are 4 from your task force perspective the operative numbers 5 under that provision of the statute? 6 A. Yes, sir. 7 Q. Now, you testified this morning with respect to 8 several issues that you identified as contributing to 9 the -- several actuarial assumptions that contribute 10 to the underfunding of the two pension systems here in 11 Detroit? 12 A. I would just clarify that those are two different 13 things. There are activities that have happened in 14 the past -- 15 Q. Right. 16 A. -- which in my view have contributed to the unfunded 17 position of the plans and then there are actuarial 18 assumptions that when you vary those will impact the 19 underfunding calculation. 20 Q. Okay. And you identified with respect to the 21 actuarial assumptions the assumed rate of return on 22 investments, the smoothing technique that the 23 actuaries had adopted with respect to amortizing 24 experiencing gains and losses and the amortization 25 period that they adopted, the 30-year period, at least</p>	<p style="text-align: right;">Page 140</p> <p>1 actuarial standards? 2 Q. Well, there are actuarial -- you're familiar with 3 actuarial standards of practice? 4 A. Generally, yes. 5 Q. So there are professional standards that actuaries 6 operate under, you're aware of that; right? 7 A. Yes, sir. 8 Q. And there are particular standards that govern, for 9 example, earnings assumptions. You're familiar with 10 those? 11 A. Yes, sir. 12 Q. And you're familiar with actuarial -- an actuarial 13 standard that deals with the smoothing issue, dealing 14 with volatility and market returns? 15 A. Yes, sir. 16 Q. So my question is has the task force taken a view as 17 to whether any of the assumptions that you identified 18 in your testimony are contrary to actuarial standards 19 of practice? 20 MR. MILLER: Object to form. 21 A. I would say that the task force has come to the same 22 view that's contained in my declaration, which is that 23 the assumptions used, there -- it would be more 24 appropriate to use different assumptions, but I don't 25 think that we've ever said that -- or come to the</p>

<p style="text-align: right;">Page 141</p> <p>1 conclusion as a task force that the actuarial 2 valuations don't comply with actuarial standards. 3 Q. Right. I mean, your declaration does not take the 4 position that any of the assumptions that you identify 5 in it are in fact inconsistent with actuarial 6 standards of practice; isn't that right? 7 A. That's correct. 8 Q. Have you asked for -- has your task force asked for 9 any -- have you asked the Milliman firm for an opinion 10 as to whether the actuarial standards that you discuss 11 in your declaration and were the subject of your 12 testimony earlier, have you asked them whether -- for 13 an opinion as to whether those assumptions are 14 consistent or inconsistent with actuarial standards of 15 practice? 16 A. We have discussed that, yes, and they have opined, if 17 I recall correctly, that they are -- there is not a -- 18 they don't breach, if you will, or go against 19 actuarial standards. 20 Q. Okay. And was that opinion rendered in writing or was 21 that an oral discussion? 22 A. That would have been an oral discussion. 23 (Marked Exhibit No. 18.) 24 Q. And I'm back to the series of letters where I'm 25 handing what I've marked as Moore Exhibit 18. This is</p>	<p style="text-align: right;">Page 143</p> <p>1 further benefits accrue going forward? 2 A. That's correct. 3 Q. Okay. So that was the assumption that's being made 4 here. And then you wanted to ask them essentially 5 when is the General Retirement System going to run out 6 of money if we make certain further other assumptions 7 with respect to the amount of its investment return, 8 etc., as specified on page 1 of the letter? 9 A. Yes, sir. 10 Q. Where did the -- I notice the third bullet point there 11 on page 1, annual city contributions of 13.6 million. 12 Do you see that? 13 A. Yes, sir. 14 Q. Where did that number come from? 15 A. That was a calculation based on one scenario taking 16 into account an allocation of funds available based on 17 percentage of claims. 18 Q. Okay, so why don't you spell that out for me? How did 19 you get -- how did you get to 13.6 million? What was 20 the claim assumption? 21 A. I don't recall what the exact amount was for the claim 22 assumption. 23 Q. So would I be correct that the 13.6 million reflects a 24 distribution on the underfunding claim to the pension 25 fund?</p>
<p style="text-align: right;">Page 142</p> <p>1 another letter from Milliman to Mr. Miller, copied to 2 you. This one's dated July 26. 3 So just so that make sure I have the time 4 sequence right. This is -- this is after the 5 presentation to creditors; correct? 6 A. Yes, sir. 7 Q. Like a week or two? That was the 14th? 8 A. This is July 26. 9 MR. MILLER: This is July. 10 Q. Right. 11 A. The initial meeting with the creditors, the one that 12 we're referring to as the June 14th meeting. 13 Q. Right. So this is six weeks or so later? 14 A. Yes, sir. 15 Q. Okay. Why don't you tell me what was the discussion 16 that led up to tasking the Milliman firm with what is 17 discussed in Moore Exhibit 18? 18 A. This analysis related to a scenario that we asked 19 Milliman to evaluate, which is what is the impact on 20 plan assets based on certain contribution assumptions. 21 Q. Okay. And in the context of freezing the plan? 22 A. In the context of freezing the plan, that's correct. 23 Q. At the risk of offending benefits lawyers that may be 24 present here, freezing the plan I understand to mean 25 that as of the date that the plan is frozen, no</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Yes, sir. 2 Q. So if we were to take the -- I guess the present value 3 of that \$13.6 million stream of payments through the 4 2022, 2023 fiscal year, we'd come up with the 5 distribution on the underfunding claim? 6 MR. MILLER: Before you answer that, let me 7 just review this question for a moment. 8 No objection. 9 A. Not necessarily. This is a certain amount of cash 10 that would go towards that underfunded claim. There 11 certainly could be other assets that could also go 12 towards that claim. 13 Q. Okay, but I guess when you -- when you were doing this 14 analysis, were you assuming that the 13 -- that 15 \$13.6 million stream of payments represented all of 16 the consideration that would go towards the 17 underfunding claim or some of it? 18 A. I don't think we made an assumption either way. 19 Q. So how did you come up with the 13.6 as opposed to 20 14.6 or 12.6? Just help me out if you can. 21 MR. MILLER: Object to form. Asked and 22 answered. 23 A. As I indicated before, the -- this scenario looked at 24 cash available over a certain period of time and then 25 allocating that cash based on a relative percentage of</p>



<p>Page 145</p> <p>1 total claims, but that does not mean what the total 2 treatment of the claim would receive. 3 Q. Okay. So there could be a debt component to it as 4 opposed to just a cash component? 5 A. There could be a variety of items. As was indicated 6 in our creditor plan, we laid out a \$2 billion note of 7 which the various unsecured creditors would receive a 8 portion. 9 Q. So is the \$13.6 million payment stream some portion of 10 the proceeds of that note? 11 A. No, that's just -- that was just relating to cash that 12 we had projected over the next ten years in the 13 creditor plan. 14 Q. Okay. And so where would I find that cash projection? 15 A. That's in the creditor plan. 16 Q. Okay. 17 A. The June 14th creditor plan, in the cash projection, 18 it shows the amount of cash available or extra cash, 19 if you will, that the City has over the next ten 20 years. 21 Q. Okay, why don't you take a look at Moore Exhibit 3 and 22 help me work it through. The ten-year projections, 23 page 90, is that where I would find the number? 24 A. I think you're going to want to go a few pages back. 25 Q. Okay.</p>	<p>Page 147</p> <p>1 service retiree healthcare, cash to service the 2 interest on the \$2 billion note, and then the 3 remaining cash was allocated amongst claims and that's 4 -- I don't recall the exact calculation, but that's 5 how 13.6 per year or 136 million total towards GRS was 6 determined. 7 Q. So is it just a pro rata distribution based on the 8 size of the claims, the anticipated claim pool? 9 A. Essentially, yes, after taking into account those 10 first two items that I mentioned. 11 Q. Okay, so you drop those off the top and then the rest 12 of it you're allocating pro rata? 13 A. Yes, sir. 14 Q. Going back to Exhibit 18, whose idea was it to 15 contemplate a freeze of the pension plan? 16 A. The -- 17 MR. MILLER: Wait. Object to form. 18 A. The City has actually -- had undertaken efforts in 19 this regard prior to or around the time of my initial 20 engagement passing ordinances or an ordinance that 21 temporarily froze service credits, so this is 22 something that the City has actually looked at even 23 prior to the formation of the pension task force. 24 (Marked Exhibit No. 19.) 25 Q. Here's what I've marked as Moore 19 is another in this</p>
<p>Page 146</p> <p>1 A. If you go to page 98. 2 Q. Okay. 3 A. In about the middle of the page, the last row of the 4 first area that's boxed where it says funds available 5 for unsecured claims -- 6 Q. Yep. 7 A. -- with opportunities. Over the ten-year period that 8 shows 803.3 million. That is anticipated cash from 9 operations of the City that could go towards unsecured 10 claims. 11 Q. And from that 803 you in this scenario, Moore 18, you 12 allocated 13.6 million of that over one, two -- looks 13 like eight years? 14 A. There would actually be ten years. 15 Q. Ten years, okay. So you allocated 136 million of the 16 803? 17 A. Yes, sir. 18 Q. And that -- how did you come to the particular 19 percentage of the recovery for the pension 20 underfunding plan, the relationship between 803 and 21 136? 22 A. There are -- I think for this particular scenario, and 23 again, there are a lot of scenarios that get looked at 24 all the time, but for this scenario it contemplated 25 from the \$803 million cash that would be used to</p>	<p>Page 148</p> <p>1 series of letters. This is -- this one's dated August 2 2nd to Mr. Miller. It has you copied there on the 3 fifth page and in this letter there was a scenario of 4 contemplating a onetime \$895 million City contribution 5 into these plans? 6 A. Yes, sir. 7 Q. Tell me what the thinking was behind that scenario, 8 announcing that scenario. 9 A. GRS hasn't published its final actuarial valuation 10 report as of June 30th, 2012, but there is a draft of 11 that. 12 Q. Right. 13 A. And that shows an under -- a UAAL as of June 30th of 14 2012 of approximately \$830 million. So this was 15 rolled forward by one year. 16 Q. Got it. 17 A. So from June 30th, 2012 to June 30th of 2013, using 18 the 7.9 percent assumed rate of return such that if 19 either \$830 million had been contributed at June 30 of 20 2012 or \$895 million was contributed June 30th of 21 2013, in order to bring the plan up to 100 percent 22 funded on an actuarial basis, what would the potential 23 impact on plan assets be over a future time period. 24 Q. So why was that -- why was that done? I assume -- let 25 me ask. I assume we haven't found \$895 million in the</p>



<p style="text-align: right;">Page 149</p> <p>1 City of Detroit to put into that pension fund as of</p> <p>2 July of next year; correct? July of this year;</p> <p>3 correct?</p> <p>4 MR. MILLER: Object to form. Go ahead.</p> <p>5 A. Obviously there are a number of potential sources of</p> <p>6 cash that are still uncertain.</p> <p>7 Q. Okay.</p> <p>8 A. But to answer your question about why this was done --</p> <p>9 Q. Yeah.</p> <p>10 A. -- there were a number of comments that were made</p> <p>11 indicating that the plan is only \$830 million</p> <p>12 underfunded or some people refer to the June 30th of</p> <p>13 2011 number and our point on this was to indicate that</p> <p>14 even if the plan was topped off from an actuarial</p> <p>15 standpoint, meaning that it was funded at 100 percent,</p> <p>16 if you roll forward using certain assumptions, what</p> <p>17 potentially happens to plan assets.</p> <p>18 Q. I see. But one of the assumptions is there's going to</p> <p>19 be no further contributions into the plan after that</p> <p>20 lump sum; correct?</p> <p>21 A. Yes. And what that is getting at is there's no future</p> <p>22 accrual of benefits. So you fully fund it based on</p> <p>23 the benefits that have been accrued --</p> <p>24 Q. Okay.</p> <p>25 A. -- which if that was the case, if it was fully funded</p>	<p style="text-align: right;">Page 151</p> <p>1 would be -- that in the City's view must occur;</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Has there been a specification of those level of cuts</p> <p>5 that the City contends must occur?</p> <p>6 MR. MILLER: Object to form.</p> <p>7 Q. I mean, have you put a dollar amount on it?</p> <p>8 A. No, and our analysis of this continues. Right now we</p> <p>9 still don't know what assets could be available to put</p> <p>10 towards the pensions. We still have not had the type</p> <p>11 of dialogue that we would like to have related to the</p> <p>12 calculation of the unfunded amount, so because of</p> <p>13 those two uncertainties among others we don't know</p> <p>14 what cuts, if any, there may need to be.</p> <p>15 Q. Well, doesn't it say there must be significant cuts?</p> <p>16 Am I -- are you saying that there's some -- that the</p> <p>17 City's position may be that there are no cuts that are</p> <p>18 necessary in accrued vested pension amounts?</p> <p>19 MR. MILLER: Object to form.</p> <p>20 A. We don't know. That's where we want to continue to</p> <p>21 engage in discussions and negotiations with the</p> <p>22 parties, but depending on what the unfunded amount is</p> <p>23 and what assets may be available for those claims, it</p> <p>24 certainly is possible.</p> <p>25 Q. So maybe that should have been worded there may be</p>
<p style="text-align: right;">Page 150</p> <p>1 from an actuarial standpoint and no new benefits</p> <p>2 accrued and you experience a 7.9 percent assumed rate</p> <p>3 of return -- or actual rate of return, what would</p> <p>4 happen to the plan assets.</p> <p>5 Q. Let me ask you if you have Moore Exhibit 3 there, I</p> <p>6 want to ask you a few questions with regard to that.</p> <p>7 Let me direct you to page 95 of that</p> <p>8 presentation. Hang on for a second. I'm sorry, I was</p> <p>9 in the wrong place. Page 109. Looking at the heading</p> <p>10 there, claims for unfunded pension liabilities.</p> <p>11 A. Yes, sir.</p> <p>12 Q. Were you involved at all in the drafting of that part</p> <p>13 of this presentation?</p> <p>14 A. I don't think I wrote that, but I was aware of this</p> <p>15 language.</p> <p>16 Q. Okay. How about the specifically the language of the</p> <p>17 third bullet point? Because the amounts realized on</p> <p>18 the underfunding claims would be substantially less</p> <p>19 than the underfunding amount, there must be</p> <p>20 significant cuts in accrued vested pension amounts for</p> <p>21 both active and currently retired persons. Were you</p> <p>22 involved in formulating that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And has the City -- I noticed in this presentation</p> <p>25 there's no quantification of what -- of the cuts that</p>	<p style="text-align: right;">Page 152</p> <p>1 significant cuts rather than must?</p> <p>2 MR. MILLER: Object to form. It asks for</p> <p>3 speculation.</p> <p>4 MR. CIANTRA: I don't think it asks for</p> <p>5 speculation at all.</p> <p>6 MR. MILLER: It asks for speculation, but</p> <p>7 you can go ahead and speculate.</p> <p>8 A. Possibly.</p> <p>9 Q. But in any event, there's been no specific</p> <p>10 quantification of any level of cuts to accrued vested</p> <p>11 pension amounts that the City has formulated in this</p> <p>12 restructuring process to date; isn't that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And I would assume from that that you have not</p> <p>15 provided the unions or any of the retiree groups with</p> <p>16 any -- any quantification of cuts that the City would</p> <p>17 like to see made?</p> <p>18 A. No, we have met with parties regarding the pension</p> <p>19 multiple times and we've laid out a process that we</p> <p>20 propose to follow; however, that process really has</p> <p>21 not been started unfortunately.</p> <p>22 Q. Are you aware of provisions of the Michigan State</p> <p>23 Constitution that affect the ability of the State or</p> <p>24 its municipalities to alter accrued pension benefits?</p> <p>25 A. Generally, yes.</p>

<p style="text-align: right;">Page 153</p> <p>1 Q. How did you become aware of those provisions?</p> <p>2 A. I have been aware of that provision or provisions for</p> <p>3 multiple years. I don't recall how I originally</p> <p>4 became aware of them, but I've been aware of them for</p> <p>5 quite sometime.</p> <p>6 Q. So you were aware of those provisions at least</p> <p>7 generally when you undertook the assignment for the</p> <p>8 City in this case?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Have there been discussions of those provisions of the</p> <p>11 State Constitution in the various discussions among</p> <p>12 members of your pension task force?</p> <p>13 A. Can you clarify?</p> <p>14 Q. You indicated earlier that you were part of a pension</p> <p>15 task force that's been considering pension issues</p> <p>16 since I guess the spring of this year and my question</p> <p>17 is during the discussions, the meetings of that task</p> <p>18 force, have you -- has that provision of the Michigan</p> <p>19 State Constitution been a subject of discussion?</p> <p>20 A. Yes.</p> <p>21 Q. In what context?</p> <p>22 A. The existence of it.</p> <p>23 Q. And how did it -- who brought that up?</p> <p>24 A. I don't recall.</p> <p>25 Q. What was discussed about it?</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. And was there more than one such discussion or did it</p> <p>2 just come up on one occasion?</p> <p>3 A. It probably came up more than -- I seem to recall more</p> <p>4 than one occasion where a discussion about whether the</p> <p>5 City would have to file for Chapter 9 took place and</p> <p>6 the pension element was discussed.</p> <p>7 Q. And what was the -- was there consensus that was</p> <p>8 developed with respect to that issue?</p> <p>9 MR. MILLER: I'm going to object and ask</p> <p>10 the witness before he answers that question whether in</p> <p>11 connection with any discussion that might have led to</p> <p>12 a consensus that discussion included lawyers and</p> <p>13 counsel --</p> <p>14 MR. CIANTRA: I'm not asking him --</p> <p>15 MR. MILLER: -- and counsel that was</p> <p>16 provided by those lawyers.</p> <p>17 MR. CIANTRA: I'm not asking about</p> <p>18 discussions with counsel, I'm asking him whether this</p> <p>19 task force that was looking at the pension issues</p> <p>20 reached a consensus as to the question of the effect</p> <p>21 of this provision of the Michigan State Constitution</p> <p>22 on a Chapter 9 filing.</p> <p>23 MR. MILLER: But the task force included</p> <p>24 counsel. He's testified to that.</p> <p>25 MR. CIANTRA: Well, I'm not interested in</p>
<p style="text-align: right;">Page 154</p> <p>1 A. The acknowledgment of the existence of it to make sure</p> <p>2 that everyone on the task force was aware of it and we</p> <p>3 also discussed an Attorney General opinion regarding</p> <p>4 that provision back from the late 1970s, I believe,</p> <p>5 and whether that provision constitutes -- you know,</p> <p>6 how far those protections go.</p> <p>7 Q. And who brought up that subject?</p> <p>8 A. I don't recall who would have brought it up.</p> <p>9 Q. Were those discussions before the City made its</p> <p>10 Chapter 9 filing?</p> <p>11 A. Yes.</p> <p>12 Q. And were there discussions that you were party to with</p> <p>13 respect to the Chapter 9 filings that involved the</p> <p>14 question of the -- those provisions of the Michigan</p> <p>15 State Constitution?</p> <p>16 MR. MILLER: Object to form.</p> <p>17 A. I believe that that would have come up, yes.</p> <p>18 Q. It came up in discussions you were party to?</p> <p>19 A. Yes.</p> <p>20 Q. With whom?</p> <p>21 A. When there were discussions about the potential for a</p> <p>22 Chapter 9 filing, a variety of topics were discussed</p> <p>23 and I seem to recall that element coming up.</p> <p>24 Q. When were those discussions, Mr. Moore?</p> <p>25 A. In the June/July time period.</p>	<p style="text-align: right;">Page 156</p> <p>1 the discussions, I'm interested was there a consensus</p> <p>2 reached on this issue, not necessarily what your</p> <p>3 counsel might have advised or said or any of that.</p> <p>4 MR. MILLER: But -- but to the extent that</p> <p>5 the -- a consensus was reached and that consensus was</p> <p>6 based on legal advice, that consensus would be in my</p> <p>7 judgment privileged. So that's why I asked him</p> <p>8 whether in connection with discussions and discussions</p> <p>9 that may have reached a consensus as to the question</p> <p>10 of the effect of the provision of the State</p> <p>11 Constitution on Chapter 9 filing, whether that</p> <p>12 consensus was reached based on advice of counsel.</p> <p>13 MR. CIANTRA: I'm not asking him that.</p> <p>14 MR. MILLER: And if so, then I instruct</p> <p>15 you, Mr. Moore, not to expound.</p> <p>16 MR. CIANTRA: So let me ask the question</p> <p>17 again. Let's make the record straight.</p> <p>18 Q. Did the task force that you were a part of reach a</p> <p>19 consensus on the question of what the effect of the</p> <p>20 provision of the Michigan State Constitution that</p> <p>21 protects accrued pension benefits would have on a</p> <p>22 Chapter 9 filing?</p> <p>23 A. No.</p> <p>24 Q. There was no consensus?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 157</p> <p>1 Q. There were different views that were expressed?</p> <p>2 A. There wasn't -- there wasn't a consensus that we tried</p> <p>3 to come up with. As I indicated before, the existence</p> <p>4 of the provision was acknowledged and it was</p> <p>5 discussed, but the pension task force did not come to</p> <p>6 an opinion as it relates to anything regarding that</p> <p>7 provision in the Michigan Constitution.</p> <p>8 Q. Was it something that you were concerned about?</p> <p>9 A. Can you clarify in terms of concern?</p> <p>10 Q. You were aware of this provision; right? You were</p> <p>11 aware at least from the actuarial reports that the</p> <p>12 plans were underfunded; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you were aware that in the proposal to creditors</p> <p>15 that we just looked at the Emergency Manager states</p> <p>16 that there must be significant cuts in accrued vested</p> <p>17 pension amounts for both active and currently retired</p> <p>18 persons. So my question is were you concerned about</p> <p>19 that in light of your understanding of the Michigan</p> <p>20 State Constitution?</p> <p>21 A. To the extent that retirees would face some sort of</p> <p>22 cut, certainly as a human being I would be concerned</p> <p>23 about that.</p> <p>24 Q. I'm not asking as a human being, I'm asking in light</p> <p>25 of your understanding of the State's Constitution.</p>	<p style="text-align: right;">Page 159</p> <p>1 the treasury department for the State of Michigan, so</p> <p>2 if there were discussions, it would have been with the</p> <p>3 treasury department.</p> <p>4 Q. So that would have been Mr. Dillon or one of his</p> <p>5 subordinates?</p> <p>6 A. Yes.</p> <p>7 Q. With --</p> <p>8 MR. MILLER: Tom, excuse me, are you going</p> <p>9 to shortly wrap up? Because otherwise, I need a</p> <p>10 five-minute break.</p> <p>11 MR. CIANTRA: Take your five-minute break.</p> <p>12 I won't be that long, Evan, afterwards.</p> <p>13 MR. MILLER: Yes, that's fine. Thanks.</p> <p>14 (A brief recess was taken.)</p> <p>15 MR. MILLER: Back on the record?</p> <p>16 MR. CIANTRA: Yeah, whenever you're ready.</p> <p>17 Sharon?</p> <p>18 MS. LEVINE: No, I'm good. I'm just</p> <p>19 stretching.</p> <p>20 MR. CIANTRA: You're just stretching.</p> <p>21 Okay, back on the record.</p> <p>22 BY MR. CIANTRA:</p> <p>23 Q. In connection with your work on the pension task</p> <p>24 force, Mr. Moore, did you inquire as to the level of</p> <p>25 benefits that pensioners were receiving from the two</p>
<p style="text-align: right;">Page 158</p> <p>1 MR. MILLER: Objection to form. Calls for</p> <p>2 a legal conclusion.</p> <p>3 Q. You can answer the question.</p> <p>4 A. I'm not sure that I understand the question. You</p> <p>5 asked if I was concerned and I sought clarification</p> <p>6 for that and I'm not sure I understand what additional</p> <p>7 you're asking about concern.</p> <p>8 Q. Were you concerned that the -- let me ask</p> <p>9 specifically.</p> <p>10 Were you concerned that the position that</p> <p>11 the Emergency Manager took with respect to accrued</p> <p>12 pension benefits was inconsistent with your</p> <p>13 understanding of what the State Constitution requires?</p> <p>14 A. That to me is a legal opinion that I'm not equipped to</p> <p>15 make.</p> <p>16 Q. Did you have any discussions with anyone in the State</p> <p>17 government with respect to this issue that -- the</p> <p>18 interplay between the Michigan State Constitution</p> <p>19 provisions and the Chapter 9 filing by the City?</p> <p>20 A. Not that I can recall.</p> <p>21 Q. So there may have been such discussions?</p> <p>22 A. There may have been.</p> <p>23 Q. And if there had been such discussions, who from the</p> <p>24 State would likely have been involved in it?</p> <p>25 A. My interactions have been essentially exclusively with</p>	<p style="text-align: right;">Page 160</p> <p>1 pension plans?</p> <p>2 A. Just to clarify, are you referring to those in pay</p> <p>3 status?</p> <p>4 Q. Yeah, in pay status, right.</p> <p>5 A. Yes, sir.</p> <p>6 Q. And am I correct that with respect to the General</p> <p>7 Retirement System the average annual benefit is a</p> <p>8 little less than \$20,000 a year?</p> <p>9 A. We never calculated the average across all people on</p> <p>10 pay status. We looked at it in different increments</p> <p>11 in terms of the number of people at various ages</p> <p>12 receiving certain monthly amounts.</p> <p>13 Q. Okay. What's the -- do you recall what's the median?</p> <p>14 A. We never calculated the median.</p> <p>15 Q. Okay, how about the mean?</p> <p>16 A. We never calculated the mean.</p> <p>17 Q. Did you do that with respect to the Police and Fire</p> <p>18 plan?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay, what was the average that was received under</p> <p>21 that plan?</p> <p>22 A. We did not calculate the average, similar -- we pulled</p> <p>23 similar data to -- for both plans.</p> <p>24 Q. You don't recall a presentation by Mr. Orr where</p> <p>25 certain representations were made as to what the</p>

<p style="text-align: right;">Page 161</p> <p>1 average pension benefit was under these two systems?</p> <p>2 A. Not offhand.</p> <p>3 Q. Let me ask. With respect to -- my understanding is at</p> <p>4 least with respect to the police officers and firemen</p> <p>5 in the City that they are not covered by the Social</p> <p>6 Security system?</p> <p>7 A. Participants in the Police and Fire Retirement System</p> <p>8 do not participate in Social Security, that's correct.</p> <p>9 Q. To this day; correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So for their earnings, a police officer in the City of</p> <p>12 Detroit would -- for their earnings from the City of</p> <p>13 Detroit would have no Social Security; correct?</p> <p>14 A. They don't pay in and then they don't receive,</p> <p>15 correct.</p> <p>16 Q. Okay. And is that the case for certain of the</p> <p>17 retirees in the General Retirement System as well?</p> <p>18 A. I don't believe so. The reason for two different</p> <p>19 pension systems is specifically because one system is</p> <p>20 for those that participate in Social Security and one</p> <p>21 system is for those that do not.</p> <p>22 Q. Okay, so your understanding is that none of the</p> <p>23 participants in the General Retirement System are not</p> <p>24 eligible for Social Security?</p> <p>25 A. That could -- there could be people in GRS that don't</p>	<p style="text-align: right;">Page 163</p> <p>1 BY MR. RUEGGER (continued):</p> <p>2 Q. Do you have your declaration in front of you,</p> <p>3 Mr. Moore?</p> <p>4 A. Yes, sir.</p> <p>5 Q. If you could open it up to page 10 where you start a</p> <p>6 discussion of past practices?</p> <p>7 A. Yes.</p> <p>8 Q. I'd first like to talk about the annuity savings plan,</p> <p>9 which you discuss in paragraph 18. Do you know what</p> <p>10 years the annuity savings plan was in active mode or</p> <p>11 being pursued?</p> <p>12 A. Based on our investigation it appears that it has been</p> <p>13 available since at least 1973 and we have reviewed</p> <p>14 certain documentation that would suggest that some</p> <p>15 form of annuity savings plan has been in existence all</p> <p>16 the way back perhaps into the 1930s.</p> <p>17 Q. I take it -- well, withdrawn.</p> <p>18 Do you know whether the annuity savings</p> <p>19 plan in any form is continuing at present?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Is it continuing in the format described in your</p> <p>22 declaration in paragraph 18?</p> <p>23 A. Could you be more specific in terms of -- there are --</p> <p>24 is a number or there's a lot of information in</p> <p>25 paragraph 18.</p>
<p style="text-align: right;">Page 162</p> <p>1 participate in the Social Security based on their age</p> <p>2 or when they worked for the City, that's a</p> <p>3 possibility, I don't know for sure.</p> <p>4 Q. Okay, so there may be some of the retirees who are</p> <p>5 covered by that plan who have -- whose earnings were</p> <p>6 not subject to Social Security?</p> <p>7 A. It's possible.</p> <p>8 Q. But you don't know?</p> <p>9 A. I don't know for sure.</p> <p>10 Q. And is that something that someone was tasked to find</p> <p>11 out?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Would you agree that that might be a relevant</p> <p>14 consideration in evaluating what to do with that --</p> <p>15 with those accrued -- the accrued pension benefits of</p> <p>16 folks in that system?</p> <p>17 A. It may be relevant, yes, depending on what gets looked</p> <p>18 at.</p> <p>19 MR. CIANTRA: I have no further questions.</p> <p>20 Thank you.</p> <p>21 MR. MILLER: Can we go off the record?</p> <p>22 (Discussion held off the record.)</p> <p>23 MR. MILLER: Back on the record.</p> <p>24 MR. RUEGGER: Yes, this won't take too</p> <p>25 long.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Sure. You'll see the third sentence where you say,</p> <p>2 under the terms of the GRS plan, active city employees</p> <p>3 may elect to invest 3, 5 or 7 percent of their</p> <p>4 paychecks into an annuity savings plan.</p> <p>5 Does that aspect of the annuity savings</p> <p>6 plan continue to this day?</p> <p>7 A. Yes.</p> <p>8 Q. And is that available to all GRS covered active</p> <p>9 employees?</p> <p>10 A. I believe so.</p> <p>11 Q. And the next part of that sentence says that the</p> <p>12 investment earns interest based on a rate of return</p> <p>13 established at the discretion of the GRS Board of</p> <p>14 Trustees.</p> <p>15 Is that still accurate?</p> <p>16 A. Yes; however, there was an ordinance passed in 2011</p> <p>17 that provides parameters within which the board may</p> <p>18 specify the interest.</p> <p>19 Q. Do you know what interest rate is current -- has</p> <p>20 currently been specified by the board?</p> <p>21 A. As I understand it, it's 7.9 percent.</p> <p>22 Q. And is it true -- okay, turning to the next page,</p> <p>23 we're still on paragraph 18, you state in the sentence</p> <p>24 that begins but in many years. Do you see that</p> <p>25 sentence?</p>

<p style="text-align: right;">Page 165</p> <p>1 A. Yes.</p> <p>2 Q. The GRS trustees chose to credit these annuity savings</p> <p>3 plan employee accounts with rates of return that were</p> <p>4 far greater than the actual GRS rate of return earned</p> <p>5 on the investments.</p> <p>6 So I take it from your prior testimony that</p> <p>7 that is still an accurate aspect of the annuity</p> <p>8 savings plan; correct?</p> <p>9 MR. MILLER: Object to form.</p> <p>10 A. The ordinance passed in 2011 that I just referred to</p> <p>11 addresses this issue.</p> <p>12 Q. And what does it provide generally? I know you don't</p> <p>13 have it in front of you but to your memory.</p> <p>14 A. Yes, generally it provides that the interest rate</p> <p>15 credited to the annuity savings fund accounts cannot</p> <p>16 exceed the assumed rate of return on the plan assets.</p> <p>17 Q. Only active employees were allowed to participate in</p> <p>18 this plan; correct?</p> <p>19 A. Yes, sir. From the standpoint of making new</p> <p>20 contributions, when an employee retires, the employee</p> <p>21 has the choice of taking a lump sum of their annuity</p> <p>22 savings fund account or having it paid in an annuity,</p> <p>23 so there could be retired employees that are still</p> <p>24 getting payments from the annuity savings fund but</p> <p>25 they would not be contributing to it.</p>	<p style="text-align: right;">Page 167</p> <p>1 A. Yes. Amounts that were used to credit interest on the</p> <p>2 annuity savings fund accounts and pay 13th checks.</p> <p>3 Q. The 1.9 billion does not include any principal or the</p> <p>4 3 or the 5 or the 7 percent of the paycheck that was</p> <p>5 invested; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. But the interest being calculated there, is that all</p> <p>8 interest or just the amount of interest in excess of</p> <p>9 the interest earned under the plan?</p> <p>10 A. In excess. The interest in excess of what was earned</p> <p>11 by plan assets.</p> <p>12 Q. And of the 1.9 billion, did Mr. Esuschanko break it</p> <p>13 down between the 13th check and the annuity savings</p> <p>14 plan?</p> <p>15 A. Yes.</p> <p>16 Q. How much of the 1.9 was attributable to the annuity</p> <p>17 savings plan?</p> <p>18 A. I don't recall that breakdown.</p> <p>19 Q. Do you know what documents or records might contain</p> <p>20 that breakdown?</p> <p>21 A. Yes, there was a memo that was prepared by the city</p> <p>22 council fiscal analysis division in around November of</p> <p>23 2011 in support of the ordinance that I just</p> <p>24 previously mentioned that has attached to it</p> <p>25 Mr. Esuschanko's report.</p>
<p style="text-align: right;">Page 166</p> <p>1 Q. In the last sentence of paragraph 18 you say that</p> <p>2 hundreds of millions of dollars of plan assets</p> <p>3 intended to support the City's traditional defined</p> <p>4 benefit pension arrangements were converted by GRS</p> <p>5 trustees to provide a windfall to the annuity savings</p> <p>6 accounts of active employees outside of a defined</p> <p>7 benefit pension plan.</p> <p>8 Has Conway MacKenzie or any other firm to</p> <p>9 your knowledge quantified the dollar amount of plan</p> <p>10 assets that were converted to the annuity savings</p> <p>11 accounts?</p> <p>12 A. Yes.</p> <p>13 Q. And what is that amount, if you remember?</p> <p>14 A. One analysis that I've looked at was performed by</p> <p>15 Joe Esuschanko, E-S-U-S-C-H-A-N-K-O.</p> <p>16 Q. Okay.</p> <p>17 A. And he analyzed the impact from both the annuity</p> <p>18 savings fund as well as 13th checks between 1985 and</p> <p>19 2008 and he quantified that to be, based on the</p> <p>20 principal amount as well as the lost interest earnings</p> <p>21 on those funds, to be approximately \$1.9 billion.</p> <p>22 Q. Okay. I want to make sure I understand what you --</p> <p>23 that last answer. That would be both the annuity</p> <p>24 savings plan and the 13th check program that you</p> <p>25 reference in paragraph 19?</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Thank you. And do you recall whether Mr. Esuschanko's</p> <p>2 report breaks down the amounts on each year or was it</p> <p>3 an accumulation of 2005 through 2008?</p> <p>4 A. It shows by year.</p> <p>5 Q. Turning to the 13th check subject, which is in</p> <p>6 paragraph 19 of your declaration, do you have an</p> <p>7 understanding as to what years the 19th check program</p> <p>8 was pursued?</p> <p>9 A. Just to clarify, you had indicated -- you just said</p> <p>10 19th check, I think you're referring to the 13th</p> <p>11 check.</p> <p>12 Q. I'm sorry, my apologies. Strike that again. I'll</p> <p>13 answer it again -- or I'll ask it again.</p> <p>14 Do you recall in what years the 13th check</p> <p>15 program was utilized?</p> <p>16 A. Mr. Esuschanko's analysis I believe has 13th check</p> <p>17 amounts in that same time period, 1985 through 2008.</p> <p>18 I have seen information that would suggest that 13th</p> <p>19 checks may have occurred before 1985 for the GRS</p> <p>20 system.</p> <p>21 Q. And if I understand your declaration correctly, this</p> <p>22 13th check program was used for both the GRS and the</p> <p>23 PFRS systems?</p> <p>24 A. The 13th check, if we use that term as it relates to</p> <p>25 the Police and Fire Retirement System, is also -- or</p>



<p>Page 169</p> <p>1 has also been referred to as gain sharing.</p> <p>2 Q. So it's only referred to as gain sharing related to</p> <p>3 the PFRS system?</p> <p>4 A. I have seen references to both 13th checks and gain</p> <p>5 sharing for PFRS. The reason why there's a</p> <p>6 distinction is payouts that happen from PFRS went to</p> <p>7 both active and retired employees whereas on the GRS</p> <p>8 side those payments just went to retired employees.</p> <p>9 Q. Are you aware whether a portion of the 13th check</p> <p>10 program or payments pursuant to the 13th check program</p> <p>11 were made to the City itself?</p> <p>12 A. Well, the 13th check didn't go to the City, but</p> <p>13 typically the board would approve a total amount and</p> <p>14 allocate a portion to annuity savings fund interest,</p> <p>15 another portion to 13th checks and then a third</p> <p>16 portion to be used as a credit to the City.</p> <p>17 Q. And are you aware -- you may have already addressed</p> <p>18 this in your testimony, I apologize -- but are you</p> <p>19 aware of whether any payments among those allocated</p> <p>20 went to active employees other than the -- not in the</p> <p>21 annuity savings plan context but in the 13th check</p> <p>22 program?</p> <p>23 A. Speaking just about GRS, if we exclude the crediting</p> <p>24 of the annuity savings fund accounts, I'm not aware of</p> <p>25 13th checks going to active employees.</p>	<p>Page 171</p> <p>1 State of Michigan)</p> <p>2 County of Genesee)</p> <p>3 Certificate of Notary Public</p> <p>4 I certify that this transcript is a complete, true and</p> <p>5 correct record of the testimony of the witness held in this</p> <p>6 case.</p> <p>7 I also certify that prior to taking this deposition,</p> <p>8 the witness was duly sworn or affirmed to tell the truth.</p> <p>9 I further certify that I am not a relative or an</p> <p>10 employee of or an attorney for a party; and that I am not</p> <p>11 financially interested, directly or indirectly, in the</p> <p>12 matter.</p> <p>13 WITNESS my hand this 20th day of September,</p> <p>14 2013.</p> <p>15</p> <p>16</p> <p>17 <i>Jeanette M. Fallon</i></p> <p>18 Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267</p> <p>19 Certified Realtime Reporter</p> <p>20 Registered Merit Reporter</p> <p>21 Certified LiveNote Reporter</p> <p>22 Certified Shorthand Reporter</p> <p>23 Notary Public, Genesee, Michigan</p> <p>24 Acting in Oakland County, Michigan</p> <p>25 My Commission Expires: 9-19-18</p>
<p>Page 170</p> <p>1 MR. CIANTRA: I believe this has been the</p> <p>2 subject of discussion between people in your firm and</p> <p>3 my firm, but I just want to confirm with Mr. Moore</p> <p>4 what his understanding is as to the October 23rd</p> <p>5 hearing.</p> <p>6 Q. Do you have any understanding as to whether you are</p> <p>7 expected to testify at the October 23rd hearing?</p> <p>8 A. It has not been discussed.</p> <p>9 Q. So I take it that if you haven't discussed whether</p> <p>10 you're going to testify, you similarly have not</p> <p>11 discussed what you might testify to; is that correct?</p> <p>12 A. Correct.</p> <p>13 MR. RUEGGER: I don't have any other</p> <p>14 questions.</p> <p>15 MR. MILLER: Thank you. No questions.</p> <p>16 (Deposition concluded at 4:06 p.m.)</p> <p>17 * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 172</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Our Assignment No. 471793/NYC337236</p> <p>4 Case Caption: In re City of Detroit, Michigan</p> <p>5</p> <p>6 DECLARATION UNDER PENALTY OF PERJURY</p> <p>7</p> <p>8 I declare under penalty of perjury that I have read</p> <p>9 the entire transcript of my Deposition taken in the</p> <p>10 captioned matter or the same has been read to me, and the</p> <p>11 same is true and accurate, save and except for changes</p> <p>12 and/or corrections, if any, as indicated by me on the</p> <p>13 DEPOSITION ERRATA SHEET hereof, with the understanding that</p> <p>14 I offer these changes as if still under oath.</p> <p>15 Signed on the ____ day of _____, 20____.</p> <p>16 _____</p> <p>17 CHARLES M. MOORE</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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25	CHARLES M. MOORE	



EXHIBIT E

<p style="text-align: right;">Page 308</p> <p>1 UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 -----X 5 IN RE) Chapter 9 6 CITY OF DETROIT, MICHIGAN,) Case No. 13-53846 7 Debtor.) Hon. Steven W. Rhodes 8 -----X 9 10 11 CONTINUED VIDEOTAPED DEPOSITION of 12 KEVYN D. ORR 13 Volume II 14 Washington, D.C. 15 Friday, October 4, 2013 16 17 18 Pages: 308 - 496 19 Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR, 20 CCR, CLR, RSA 21 Assignment Number: 14008 22 File Number: 105824</p>	<p style="text-align: right;">Page 310</p> <p>1 APPEARANCES: 2 3 JONES DAY 4 For the Debtor: 5 51 Louisiana Avenue, Northwest 6 Washington, D.C. 20001-2113 7 202.879.3939 8 BY: GREGORY M. SHUMAKER, ESQUIRE 9 gshumaker@jonesday.com 10 BY: DAN T. MOSS, ESQUIRE 11 dtmoss@jonesday.com 12 13 DENTONS US LLP 14 For the Retirees Committee: 15 1221 Avenue of the Americas 16 New York, New York 10020-1089 17 212.632.8342 18 BY: ANTHONY B. ULLMAN, ESQUIRE 19 anthony.ullman@dentons.com 20 21 22</p>
<p style="text-align: right;">Page 309</p> <p>1 October 4, 2013 2 11:11 a.m. 3 4 5 Continued Videotaped Deposition of KEVYN D. 6 ORR held at the law offices of: 7 8 Jones Day 9 51 Louisiana Avenue, Northwest 10 Washington, D.C. 20001 11 12 13 14 Pursuant to notice, before Cindy L. Sebo, 15 Registered Merit Reporter, Certified Shorthand 16 Reporter, Registered Professional Reporter, 17 Certified Real-Time Reporter, Certified Court 18 Reporter, Certified LiveNote Reporter, Real-Time 19 Systems Administrator, a Notary Public in and for 20 the District of Columbia. 21 22</p>	<p style="text-align: right;">Page 311</p> <p>1 APPEARANCES (Continued): 2 3 LOWENSTEIN SANDLER LLP 4 For the AFSCME: 5 65 Livingston Avenue 6 Roseland, New Jersey 07068 7 973.597.2374 8 BY: SHARON L. LEVINE, ESQUIRE 9 slevine@lowenstein.com 10 11 COHEN, WEISS AND SIMON LLP 12 For the United Auto Workers Union: 13 330 West 42nd Street 14 New York, New York 10036-6979 15 212.356.0216 16 BY: PETER D. DECHIARA, ESQUIRE 17 pdechiara@cwsny.com 18 19 20 21 22</p>



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<p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 Weil, Gotshal & Manges LLP</p> <p>4 For the Financial Guaranty Insurance Company:</p> <p>5 767 Fifth Avenue</p> <p>6 New York, New York 10153-0119</p> <p>7 212.310.8257</p> <p>8 BY: DANA KAUFMAN, ESQUIRE</p> <p>9 dana.kaufman@weil.com</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 NOONAH ETTEHAD, Videographer</p> <p>14 MICHAEL NICHOLSON, UAW</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>Page 313</p>	<p>1 EXHIBITS (Continued):</p> <p>2 ORR DEPOSITION EXHIBITS: PAGE</p> <p>3 26 Contract for Emergency</p> <p>4 Financial Manager Services 471</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 * (Exhibits Attached to Original Transcript.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>Page 315</p>



<p>1 PROCEEDINGS Page 316</p> <p>2</p> <p>3 Washington, D.C.</p> <p>4 Friday, October 4, 2013; 11:11 a.m.</p> <p>5</p> <p>6 - - -</p> <p>7 KEVYN D. ORR</p> <p>8 after having been previously duly sworn, was</p> <p>9 examined and testified further as follows:</p> <p>10 - - -</p> <p>11 THE VIDEOGRAPHER: This is the</p> <p>12 continuation of the deposition of Kevyn Orr on</p> <p>13 Friday, October the 4th of 2013 at 11:12 a.m.</p> <p>14 (Sotto voce discussion.)</p> <p>15 THE VIDEOGRAPHER: Yeah. The witness</p> <p>16 is still sworn.</p> <p>17 MS. LEVINE: Okay.</p> <p>18 - - -</p> <p>19 EXAMINATION (CONTINUED) BY COUNSEL FOR AFSCME</p> <p>20 - - -</p> <p>21 BY MS. LEVINE:</p> <p>22 Q. Mr. Orr, thank you for coming back.</p>	<p>1 So I'm going to ask you a series of Page 318</p> <p>2 questions. I'm assuming you'll take a breath and</p> <p>3 let your -- let -- let your attorney tell you</p> <p>4 whether or not you can answer --</p> <p>5 A. Okay.</p> <p>6 Q. -- and depending upon his direction,</p> <p>7 we'll go to the next question.</p> <p>8 A. That's fine.</p> <p>9 Q. Did you consider, just prior to the</p> <p>10 filing of the Chapter 9 petition, whether there</p> <p>11 were political ramifications associated with</p> <p>12 dealing with the pension's retiree benefits, other</p> <p>13 employee issues in the course of the Chapter 9?</p> <p>14 MR. SHUMAKER: Go ahead.</p> <p>15 THE WITNESS: Did I consider?</p> <p>16 BY MS. LEVINE:</p> <p>17 Q. (No audible response.)</p> <p>18 A. No.</p> <p>19 Q. Was it your understanding that any of</p> <p>20 the City's elected officials were concerned about</p> <p>21 political considerations impacting their workforce</p> <p>22 pension's retiree benefits as a result of the</p>
<p>1 Again, we -- Page 317</p> <p>2 A. Sure --</p> <p>3 Q. -- appreciate it.</p> <p>4 A. -- um-hum.</p> <p>5 Q. As we understand from the court</p> <p>6 reporter before we started the deposition, you've</p> <p>7 been previously sworn. You're continued to be</p> <p>8 sworn, and we're not going to go through again,</p> <p>9 unless you'd like me to repeat it, the ground</p> <p>10 rules for the deposition.</p> <p>11 A. No, that's fine. I understand I'm</p> <p>12 still under oath.</p> <p>13 Q. Good.</p> <p>14 Mr. Orr, we were talking the last</p> <p>15 time we met about some of the discussions that you</p> <p>16 had with the Governor leading up to the filing of</p> <p>17 the bankruptcy, and some of those discussions, as</p> <p>18 the Court has directed, are protected by the</p> <p>19 common interest agreement --</p> <p>20 A. Yes.</p> <p>21 Q. -- but -- but our understanding is</p> <p>22 that some of them may not be.</p>	<p>1 Chapter 9 filing? Page 319</p> <p>2 A. Was it my understanding that any of</p> <p>3 the City officials were concerned?</p> <p>4 Q. The Mayor, anybody working with the</p> <p>5 Mayor.</p> <p>6 A. I'd be speculating. They might have</p> <p>7 been, but I don't know for sure.</p> <p>8 Q. Did you have any discussions with the</p> <p>9 Mayor or any of the City officials about the</p> <p>10 political ramifications of a Chapter 9 filing?</p> <p>11 A. No, not really political</p> <p>12 ramifications, no.</p> <p>13 Q. Did you discuss with the Governor any</p> <p>14 of the political ramifications surrounding a</p> <p>15 Chapter 9 filing?</p> <p>16 A. Outside of any attorney-client</p> <p>17 communications?</p> <p>18 Q. (No audible response.)</p> <p>19 A. You're shaking your head, so I</p> <p>20 don't --</p> <p>21 Q. Well, the political -- I'm -- I'm</p> <p>22 asking the question about political ramifications,</p>



<p style="text-align: right;">Page 320</p> <p>1 so I'm intentionally not asking the question with 2 regard to any -- 3 A. Okay. 4 Q. -- legal discussions. 5 A. Explain for me, if you will, what you 6 mean by "political ramifications." Just -- just 7 so I make sure I understand what -- 8 Q. Well, let's put it this way -- 9 A. -- what you mean. 10 Q. -- what would -- what's your 11 understanding of political ramifications? 12 A. Well, I'm -- I'm not sure. That's 13 why I'm asking you. 14 Q. Did you consider any political 15 consequences at all in connection with the 16 Chapter 9 filing? 17 A. Did I consider? 18 Q. Yes. 19 A. No. 20 Q. Do you believe that -- do you 21 understand -- did you have any discussions with 22 regard to whether or not the Governor was</p>	<p style="text-align: right;">Page 322</p> <p>1 demonstrated any concern about political 2 ramifications as they're being used today. 3 Q. Did you understand that reductions in 4 vested pension benefits would be a necessary part 5 of any restructuring for Detroit? 6 A. I think that was certainly 7 anticipated, yes. 8 Q. Is it your understanding that the 9 Governor understood that the reduction in vested 10 pension benefits would be part of any 11 restructuring for Detroit? 12 MR. SHUMAKER: Objection: foundation. 13 MS. LEVINE: I'm asking him his 14 understanding. 15 THE WITNESS: I'm not sure what the 16 Governor understood. You'd have to ask him. 17 BY MS. LEVINE: 18 Q. Did the Governor ever communicate to 19 you that he expected that vested pension benefits 20 would be part of any restructuring for Detroit? 21 A. The Governor communicated to me that 22 he expected -- no.</p>
<p style="text-align: right;">Page 321</p> <p>1 considering any political ramifications as a 2 result of the Chapter 9 filing? 3 A. I'm -- I'm trying to understand -- 4 let me put it to you this way: The answer would 5 be no, because I believe the Governor wasn't 6 concerned about political ramifications as you 7 asked. 8 Q. Okay. 9 And what do you base that 10 understanding on? 11 Why do you believe the Governor 12 wasn't concerned about political ramifications? 13 A. Without -- and -- and let me just say 14 this throughout the deposition. It is not my 15 intent to waive or in any way impact the 16 attorney-client privilege. 17 So I'm going to try to be responsive, 18 but I don't want to bleed over into any arguments 19 later that I somehow waived the privilege. 20 My impression is in any of my 21 discussions outside of attorney-client 22 communications with the Governor, he never</p>	<p style="text-align: right;">Page 323</p> <p>1 Q. Did you discuss the reduction in 2 vested in pension benefits with the Governor prior 3 to the filing of the Chapter 9 petition? 4 A. Not outside of any attorney-client 5 communications. 6 Q. Did you discuss the reduction of 7 vested pension benefits, without going into what 8 was discussed, prior to the filing of the 9 Chapter 9 petition with the Governor? 10 A. Without waiving the attorney-client 11 privilege, we may have. 12 Q. You -- when you say "we may have," 13 you don't recall? 14 A. I -- I don't recall a specific 15 conversation with the Governor outside of 16 attorney-client communications talking about 17 reductions in pension benefits. 18 The Governor generally -- without 19 waiving the privilege, would generally say, you 20 make the decision that's best for the City in your 21 mind. 22 Q. Was it your understanding, prior to</p>



<p style="text-align: right;">Page 324</p> <p>1 the bankruptcy filing, that there was an issue 2 with regard to whether or not pension benefit 3 reductions would violate Michigan's State law or 4 the State constitution? 5 A. Can you repeat the question? 6 MS. LEVINE: Can you read back the 7 question, please? 8 THE WITNESS: Yeah. 9 - - - 10 (Whereupon, the court reporter read 11 back the pertinent part of the 12 record.) 13 - - - 14 THE WITNESS: Yes. 15 BY MS. LEVINE: 16 Q. And was it -- and did the Governor 17 also have an understanding that that was an issue? 18 MR. SHUMAKER: Objection: foundation. 19 BY MS. LEVINE: 20 Q. Was it your understanding that the 21 Governor also had an understanding that that was 22 an issue?</p>	<p style="text-align: right;">Page 326</p> <p>1 witness -- 2 MS. LEVINE: -- the objection -- 3 MR. SHUMAKER: -- I'm just stating my 4 objection. 5 MS. LEVINE: I don't want -- yeah, 6 but objection as to speculation, then, suddenly, 7 he doesn't -- he -- his answer is I'm -- I don't 8 want to speculate. 9 Objections to form are fine. 10 THE WITNESS: I -- I think I said 11 before I want to be very careful about testifying 12 to what the Governor's state of mind was. I can 13 only testify as to what I understood. 14 BY MS. LEVINE: 15 Q. And that's all I'm asking -- 16 A. Okay. 17 Q. -- we're only asking for your 18 understanding -- 19 A. Okay. 20 Q. -- I'm trying to use your 21 understanding to avoid legal conclusions or 22 speculation or anything else.</p>
<p style="text-align: right;">Page 325</p> <p>1 A. Without speculating as to what the 2 Governor would understand, I believe -- to the 3 extent I believe the Governor was aware that -- 4 what was being reported in the press and being 5 discussed, I would say yes. 6 Q. Was it your understanding that the 7 only way to reduce pension benefits was to use 8 or -- use Chapter 9 or file for Chapter 9 9 protection? 10 A. No. 11 Q. Was it the Governor's understanding 12 that the only way to reduce pension benefits or 13 to -- was to use Chapter 9 or to file for 14 Chapter 9 bankruptcy protection? 15 MR. SHUMAKER: Objection: foundation; 16 calls for speculation. 17 THE WITNESS: Yeah. Here again, I 18 don't know what the Governor's understanding was. 19 MS. LEVINE: That's fine. I'm 20 expecting objections, but please don't coach the 21 witness. The objections -- 22 MR. SHUMAKER: I'm not coaching the</p>	<p style="text-align: right;">Page 327</p> <p>1 I just want to -- I'm -- I just -- I 2 just want to understand your understanding. 3 A. Okay. 4 MR. SHUMAKER: If you phrase the 5 question that way, that will help us all out. 6 BY MS. LEVINE: 7 Q. What's your understanding of the 8 Mayor's view with regard to the reduction in 9 pension benefits? 10 A. I don't have an understanding what 11 the Mayor's view is. 12 Q. Did you discuss, prior to the 13 Chapter 9 filing, pension reductions with the 14 Mayor? 15 A. I don't believe so. 16 Q. Did you discuss, prior to the 17 Chapter 9 filing, pension reductions with anybody 18 on behalf of the City Government? 19 A. Let -- let me -- let me phrase my 20 an -- outside of any public discussions and 21 presentations I may have made at, say, for 22 instance, the June 10th creditor's meeting or the</p>



<p style="text-align: right;">Page 328</p> <p>1 June 14th meeting for creditors, I don't recall 2 any specific discussions with anyone on behalf of 3 the City about reductions. 4 Q. You -- you testified at your last 5 deposition that, in your view, concessionary 6 bargaining changes to pensions could not occur 7 within the time frame that you had to work with. 8 And I have an extra copy here if you 9 want to see the -- the transcript, but -- 10 A. Um-hum. 11 Q. -- the question is what time period 12 were you talking about? 13 A. I think I said at the June 10th 14 public meeting and, again, at the June 14th 15 proposal for creditors -- I think I was fairly 16 clear that we would need to have some agreements 17 in principle or term sheets and the like within 18 the next 30 days, and that if we were making 19 movement, we might be willing to have further 20 discussions for an additional 30 days. 21 In fact, I believe at the back of the 22 June 14th proposal, we learned -- we -- we</p>	<p style="text-align: right;">Page 330</p> <p>1 various Internet sites. I don't recall seeing my 2 June 14th presentation. 3 MS. LEVINE: Can we request a copy of 4 that if -- if it exists? 5 MR. MOSS: Which one? It's -- 6 MR. SHUMAKER: Both of them if you 7 have them. 8 THE WITNESS: I think they're on 9 YouTube. 10 MR. SHUMAKER: I'd ask you to put the 11 request into writing so we have that. 12 BY MS. LEVINE: 13 Q. When you gave the presentation at the 14 June 10th and the June 14th meeting, did you 15 believe that it was possible to reach consensual 16 agreements within the 30-day period that you 17 outlined? 18 MR. SHUMAKER: Can I just state an 19 objection here? Where are you're going, Counsel? 20 I'm going to be patient and allow you to -- to 21 ask -- ask questions, but let's be very clear from 22 the outset as to what Judge Rhodes ordered and</p>
<p style="text-align: right;">Page 329</p> <p>1 identified an evaluation time frame. So that's 2 the time frame that I thought I was being fairly 3 clear about. 4 Q. And were either the June 14 or the 5 June 20 meetings audiotaped? 6 A. The June 10th or the June 14th 7 meeting -- 8 Q. Right. Was -- were -- were either 9 the June 10th or the June 14th meeting audiotaped? 10 A. I believe the June 10th meeting was 11 audio and videotaped. I think I've seen that on 12 the Internet. 13 I don't know about the June 14th 14 meeting for creditors. 15 Q. Did -- did you videotape those 16 meetings or did the EM -- were they videotaped on 17 behalf of EM? 18 A. To be honest with you, that -- that 19 would have been done at a staff level. I don't 20 know. 21 I just know that I've seen the 22 June 10th meeting -- my June 10th presentation on</p>	<p style="text-align: right;">Page 331</p> <p>1 what ASME requested in its -- its motion to compel 2 additional testimony from Mr. Orr. 3 The request that you made was -- to 4 the Judge was that Mr. Orr reappear for three 5 hours of deposition testimony concerning his 6 communications with State officials in the 7 presence of legal counsel since his appointment as 8 emergency manager. 9 That is what the subject of today's 10 deposition is. 11 MS. LEVINE: Right. And this is a 12 foundation question. 13 MR. SHUMAKER: Okay. I just want -- 14 I -- I'm just going to caution you from the -- 15 from the get-go that we're not going to meander 16 all over that -- that's what the order is and 17 that's why we're here. 18 MS. LEVINE: Can you read back the 19 question, please? 20 - - - 21 (Whereupon, the court reporter read 22 back the pertinent part of the</p>



<p>1 record.)</p> <p>2 - - -</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Did you discuss that with the</p> <p>6 Governor before the June 10th meeting?</p> <p>7 A. Let -- as I think I said at my</p> <p>8 September 16th deposition, I would have regular</p> <p>9 meetings with the Governor, typically weekly.</p> <p>10 There were attorneys present at all of those</p> <p>11 meetings.</p> <p>12 I am not -- and I'll take guidance</p> <p>13 from my counsel, but this is in terms of how I</p> <p>14 intend to respond today.</p> <p>15 I am not trying to assert the</p> <p>16 privilege for people who have legal degrees but</p> <p>17 were not acting as attorneys. For instance, the</p> <p>18 Governor has a JD, and the Treasurer has a JD. So</p> <p>19 I'm not trying to say that the privilege attaches</p> <p>20 for their capacity as Governor and Treasurer, not</p> <p>21 acting as attorneys. But there are attorneys in</p> <p>22 those meetings on the Governor's staff acting as</p>	<p>Page 332</p> <p>1 communications were, we typically would have</p> <p>2 discussed what we would have needed to present --</p> <p>3 I don't recall so much for the June 10th public</p> <p>4 meeting, so the answer is no for there.</p> <p>5 For the June 14th meeting, we</p> <p>6 probably would have discussed at a very high level</p> <p>7 the nature of the presentation. I don't recall</p> <p>8 discussing with specificity the exact time frames.</p> <p>9 Q. In order to meet the 30-day time</p> <p>10 frame that you're discussing, were there any</p> <p>11 benchmarks or criteria that you thought would have</p> <p>12 to be met -- would have to be met within that</p> <p>13 30-day period in order to conclude what you needed</p> <p>14 to conclude at the end of the 30-day period?</p> <p>15 A. Well, I think what I said was that</p> <p>16 that was an initial 30-day period, but if we were</p> <p>17 moving forward and making progress, we'd be</p> <p>18 willing to extend it for another 30-day period or</p> <p>19 so. I think that's what I said.</p> <p>20 So when you say "benchmarks," we were</p> <p>21 looking for good-faith negotiations and movements</p> <p>22 in the nature, I think I said on June 14th,</p>
<p>Page 333</p> <p>1 attorneys.</p> <p>2 Without violating the privilege</p> <p>3 during those meetings, what I can say is that --</p> <p>4 well, if I could have the question again.</p> <p>5 Q. It's really a simple -- it -- it's</p> <p>6 a -- it's a narrow question --</p> <p>7 A. Right.</p> <p>8 Q. -- I understand the concern, but it's</p> <p>9 a narrow question.</p> <p>10 A. Right.</p> <p>11 Q. Did you discuss -- you -- as I</p> <p>12 understand your testimony, you indicated on</p> <p>13 June 10th and June 14th that you were looking at</p> <p>14 a 30-day time frame.</p> <p>15 A. Um-hum.</p> <p>16 Q. Did you discuss that 30-day time</p> <p>17 frame prior to the June 10 meeting with the</p> <p>18 Governor?</p> <p>19 A. I'll look for a little guidance. If</p> <p>20 I had discussions, they probably were during</p> <p>21 meetings where attorneys were present.</p> <p>22 Without disclosing what those</p>	<p>Page 334</p> <p>1 agreements in principle, term sheets and the like.</p> <p>2 So it's -- it's not as stringent as I</p> <p>3 think -- I don't want to give the impression that</p> <p>4 our expectation was as stringent as there had to</p> <p>5 be specific benchmarks, but we wanted for people</p> <p>6 to come in with good-faith, credible proposals to</p> <p>7 show that we were moving forward on these issues,</p> <p>8 and we would continue to negotiate on those</p> <p>9 issues.</p> <p>10 Q. Did you have -- following the June 10</p> <p>11 and June 14 meeting, did you have any discussions</p> <p>12 with the Governor with regard to the progress or</p> <p>13 lack of progress being made in that regard?</p> <p>14 A. Probably. Without violating the</p> <p>15 privilege, we probably had discussions without</p> <p>16 saying what those discussions were, because there</p> <p>17 would have been -- would have been attorneys</p> <p>18 present.</p> <p>19 Q. When did those discussions take</p> <p>20 place?</p> <p>21 A. They would typically have taken</p> <p>22 place, as I've said, at the weekly meetings that</p>



<p style="text-align: right;">Page 336</p> <p>1 the Governor and I and his team and members of my 2 team would have. 3 Q. So after June 14, when was your next 4 weekly meeting? 5 A. I don't know specifically, but I'm -- 6 I said it's typically weekly. 7 So I'm -- I think we probably had one 8 the next week. 9 Q. Do you recall what day the next week? 10 A. I do not. 11 Q. Do you recall if there was one 12 because it was -- do you recall if there was one 13 the following week? 14 A. I do not. 15 Q. Were there one or two meetings with 16 the Governor from the time of the June 14 meeting 17 to the time of the filing of the Webster 18 litigation on June 3? 19 A. Well, there could well have been more 20 than two. I do recall, and I think I said on 21 September 16th, I don't think we had one the 4th 22 of July -- week of the 4th of July, which was a</p>	<p style="text-align: right;">Page 338</p> <p>1 A. I think I said on June 16th, we've 2 had some discussions with some bargaining units. 3 I don't recall if they were between the June 14th 4 time frame -- if they were -- I think we were in 5 discussions with some bargaining units during that 6 time. So, yes, I believe we did get some 7 proposals. 8 Q. Did you report on those proposals to 9 the Governor? 10 A. I -- generally speaking, yes. 11 Q. Did you indicate to the Governor that 12 you were making progress? 13 A. I probably indicated that we were 14 making some progress, yes. 15 Q. Did you discuss with the Governor 16 whether there were additional proposals you were 17 hoping to receive? 18 A. We probably did express a wish for 19 additional proposals. We were hoping for a global 20 solution. 21 Q. Did you come up with an action plan 22 to solicit further proposals?</p>
<p style="text-align: right;">Page 337</p> <p>1 Thursday. 2 Q. Understood. Not the question. 3 The question is, from June 14 up 4 until July 3, how many times did you meet with the 5 Governor? 6 A. No. Your question was did we have 7 one or two meetings, and my answer was I believe 8 we probably had more than two. 9 Q. And did you discuss the pension 10 and/or healthcare benefit issues that you had 11 discussed during the June 10 and June 14 meeting 12 with the Governor during those two, maybe more, 13 meetings? 14 A. Ms. Levine, let me -- let me say 15 this: We probably discussed them broadly, but 16 there were no discussions that I recall in detail 17 about what our plan would have to be in those 18 meetings, such as what level of cuts they would be 19 and the like, if any. 20 Q. Did -- did you get any proposals 21 during that two-week period in response to those 22 meetings?</p>	<p style="text-align: right;">Page 339</p> <p>1 A. I thought we began that on June 14th, 2 a proposal for creditors, where we ended it by 3 saying we're interested in responses. 4 Q. In any of the meetings that you had 5 with the Governor between June 14th and July 3rd 6 where you didn't get proposals, for -- did you 7 discuss constituents from whom you didn't get 8 proposals that you wish you would have gotten 9 proposals from? 10 A. No, I didn't -- 11 MR. SHUMAKER: Objection to the form. 12 THE WITNESS: -- no, I don't recall 13 discussing at that level of specificity. 14 BY MS. LEVINE: 15 Q. The Governor authorized the Chapter 9 16 filing on July 18th. 17 Do you know who drafted the 18 Governor's authorization? 19 A. I do not. 20 Q. Do you know whether the language in 21 the Governor's authorization was discussed with 22 your attorneys at Jones Day?</p>



<p style="text-align: right;">Page 340</p> <p>1 A. I do not.</p> <p>2 Q. Did the Governor ask you to request</p> <p>3 authorization to file the Chapter 9 or was it your</p> <p>4 independent decision on July 16th?</p> <p>5 A. It was my independent decision.</p> <p>6 Q. Did you have any specific discussions</p> <p>7 with the Governor concerning the conditions or</p> <p>8 the -- or with respect to specific directions from</p> <p>9 the Governor with regard to pension benefits?</p> <p>10 MR. SHUMAKER: Object to the form.</p> <p>11 THE WITNESS: No, not with the</p> <p>12 Governor.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Was it your understanding that the</p> <p>15 Governor was seeking political cover by not taking</p> <p>16 a position with respect to pension reductions, but</p> <p>17 only citing to Section 943 of the Bankruptcy Code?</p> <p>18 MR. SHUMAKER: Objection: form.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. Did -- did you suggest the citing</p> <p>22 to 943 of the Bankruptcy Code to the Governor?</p>	<p style="text-align: right;">Page 342</p> <p>1 Q. I'm just asking your understanding.</p> <p>2 A. Let me -- let me just say this</p> <p>3 generally.</p> <p>4 I was not involved in any fashion in</p> <p>5 drafting the Governor's response. My</p> <p>6 understanding is that without citing to a specific</p> <p>7 section of the code, because I have not analyzed</p> <p>8 it, that the letter grants me authority to use any</p> <p>9 resources that are available to propose a plan of</p> <p>10 adjustment.</p> <p>11 Q. After you got the letter, did you</p> <p>12 discuss with the Governor what the meaning was in</p> <p>13 the letter of the reference to Section 543 [sic]</p> <p>14 of the Bankruptcy Code?</p> <p>15 A. No.</p> <p>16 Q. 943, I'm sorry.</p> <p>17 A. Yeah, I knew -- I knew what you</p> <p>18 meant.</p> <p>19 No.</p> <p>20 Q. Between June 14th -- or June 10th and</p> <p>21 the filing on July 18th, besides legal</p> <p>22 conclusions, besides pension benefits, did you</p>
<p style="text-align: right;">Page 341</p> <p>1 A. No. I had no involvement in the</p> <p>2 letter -- the Governor's letter.</p> <p>3 Q. Were there any discussions about</p> <p>4 citing to 943 of the Bankruptcy Code outside of</p> <p>5 the letter as a -- as of -- as a way to deal with</p> <p>6 issues with regard to pension reductions?</p> <p>7 MR. SHUMAKER: I'm just going to</p> <p>8 caution the witness again. To the extent you can</p> <p>9 answer the question without revealing</p> <p>10 attorney-client communications, you may do so.</p> <p>11 THE WITNESS: The -- there were none</p> <p>12 with the Governor.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Is it your understanding that the</p> <p>15 language regarding conditions, specifically the</p> <p>16 use of the reference to 943 of the Bankruptcy</p> <p>17 Code, authorizes you to alter vested pension</p> <p>18 benefits?</p> <p>19 A. That seems to call for a legal</p> <p>20 conclusion.</p> <p>21 Let -- let me just say this</p> <p>22 generally --</p>	<p style="text-align: right;">Page 343</p> <p>1 discuss with the Governor certain ideas that you</p> <p>2 had with regard to how to restructure or deal with</p> <p>3 the financial situation in Detroit?</p> <p>4 A. Yes, we likely did without divulging</p> <p>5 any privileges, yes.</p> <p>6 Q. I'm looking for the business</p> <p>7 financial terms, not the legal terms.</p> <p>8 In other words, did you --</p> <p>9 A. Um-hum.</p> <p>10 Q. -- discuss, for example, selling</p> <p>11 assets?</p> <p>12 A. No.</p> <p>13 Q. Did you discuss generating additional</p> <p>14 revenue with the Governor?</p> <p>15 A. Here again, some of these</p> <p>16 discussions, in fact, every meeting we had on a</p> <p>17 regular basis would have had attorneys present, so</p> <p>18 I want to be very careful.</p> <p>19 For instance -- for instance, if</p> <p>20 there are discussions about a millage rate and the</p> <p>21 maximum legal millage amount, I would not want</p> <p>22 those to bleed over into disclosing</p>



<p style="text-align: right;">Page 344</p> <p>1 attorney-client protected communications. 2 What I can say is that at -- at a 3 high level, we discussed ways to potentially 4 generate revenue. 5 Q. Did you discuss privatization with 6 the Governor during that same time frame from 7 June 10th through the filing? 8 MR. SHUMAKER: I'll just caution the 9 witness, if you had discussions with the Governor 10 where counsel was present in connection with a 11 request for an indicia of legal advice -- 12 THE WITNESS: Right. 13 MR. SHUMAKER: -- I don't want you to 14 answer to that; but if you can do so outside of 15 any such request or provision of legal advice, you 16 can answer. 17 THE WITNESS: Okay. 18 Without disclosing legal advice, we 19 may have discussed nonlegal-related issues, for 20 instance, with an outstanding solid waste RFP and 21 how that could save the City money and produced a 22 higher level of services for the City.</p>	<p style="text-align: right;">Page 346</p> <p>1 Q. During the course of these 2 conversations, did you have any conversations with 3 the Governor about preserving jobs for the 4 citizens of Detroit? 5 A. Yes. 6 Q. And what were those conversations? 7 A. Well, for instance, in the solid 8 waste RFP, one of the bidders -- I -- we probably 9 discussed that one of the bidders had come in who 10 had done this before and was able to move the City 11 jobs over to private sector jobs with the same 12 employees. And so there would be no net loss of 13 jobs. 14 Q. Did you discuss how that might impact 15 vested benefits and vested pension rights? 16 A. No, we really didn't have -- no. 17 Q. You -- you approved the retention of 18 Jones Day under EM Order Number 4 and officially 19 approved Jones Day's contract on April 20 -- 20 THE COURT REPORTER: I -- I'm sorry. 21 I can't hear you here. 22 MS. LEVINE: Sorry.</p>
<p style="text-align: right;">Page 345</p> <p>1 Legal issues regarding the RFP, I -- 2 I won't talk about, but, for instance, the -- 3 those privatization in that sense would have been 4 discussed. 5 Privatization in a broader sense, I 6 don't recall having discussions of a philosophical 7 issue about privatization. We probably would have 8 had discussions about specific RFPs outstanding. 9 BY MS. LEVINE: 10 Q. Did you have any other specific 11 discussions with regard to RFPs or outsourcing in 12 connection with improving the financial 13 condition -- or allegedly improving the financial 14 condition of the City? 15 A. Well, improving it. Like I said, 16 I -- I do recall discussions about the solid waste 17 RFP which we were somewhat excited about, save 18 money and increase quality of services. 19 I'm trying to think of anything else 20 that could be called privatization. That's the 21 one that sticks out in my mind. I don't recall 22 anything else.</p>	<p style="text-align: right;">Page 347</p> <p>1 BY MS. LEVINE: 2 Q. You approved the retention of 3 Jones Day under EM Order Number 4 and officially 4 approved Jones Day's contract on April 23, 2010; 5 is that correct? 6 A. If your represent -- representation 7 is accurate, yes. I don't independently recall 8 the dates, but that sounds correct. 9 Q. Okay. So after April 23, 2013, you 10 and Jones Day had an attorney-client relationship, 11 yes? 12 A. I think that's a legal conclusion. 13 The attorney-client relationship could attach 14 before then. 15 Q. What was your understanding of when 16 your legal attorney-client relationship with 17 Jones Day attached? 18 A. I don't know. That's what I'm saying 19 it calls for a legal conclusion. 20 My understanding of the days I 21 practiced law is that the attorney-client 22 relationship can attach prior to the actual</p>

<p style="text-align: right;">Page 348</p> <p>1 formalization of an attorney-client relationship.</p> <p>2 Q. When did you first -- all right.</p> <p>3 Let me ask you this: Did Jones Day</p> <p>4 represent the City in any capacity before</p> <p>5 April 23, 2013?</p> <p>6 A. I don't know. That's why I keep</p> <p>7 saying it could be a legal conclusion.</p> <p>8 I know that their contract was before</p> <p>9 City -- the Mayor had selected them, and their</p> <p>10 contract was below -- before City Council before</p> <p>11 then.</p> <p>12 Q. What was the date that the Mayor</p> <p>13 selected Jones Day to represent the City?</p> <p>14 A. I don't recall.</p> <p>15 Q. Was it prior to February of 2013?</p> <p>16 A. I -- I don't recall. I don't recall.</p> <p>17 I don't think so.</p> <p>18 Q. Did Jones Day represent the State of</p> <p>19 Michigan in any capacity before April 2000 --</p> <p>20 April 2013?</p> <p>21 MR. SHUMAKER: Objection: foundation.</p> <p>22 THE WITNESS: Jones Day may have --</p>	<p style="text-align: right;">Page 350</p> <p>1 A. I -- I -- only what I've read in the</p> <p>2 papers. I know nothing about the NERD Fund other</p> <p>3 than what I've read in the papers.</p> <p>4 Q. Do you know who any of the donors are</p> <p>5 to the NERD Fund?</p> <p>6 A. I haven't got a clue.</p> <p>7 Q. So it's not you?</p> <p>8 A. It is -- I've never donated to the</p> <p>9 NERD Fund, no.</p> <p>10 Q. Has Jones Day?</p> <p>11 A. Not that I know of.</p> <p>12 Q. Has any City retained professional?</p> <p>13 A. I have no idea.</p> <p>14 Q. Do you know whether any of the City's</p> <p>15 creditors are -- have donated to the NERD Fund?</p> <p>16 A. I know nothing about the NERD Fund</p> <p>17 other than what I've read in the papers. The</p> <p>18 first time I heard about the NERD Fund is when I</p> <p>19 read about it in the paper --</p> <p>20 Q. So do --</p> <p>21 A. -- I know nothing about the donors.</p> <p>22 Q. Do you know whether any -- do you</p>
<p style="text-align: right;">Page 349</p> <p>1 I -- I don't know. They may have represented the</p> <p>2 State in other matters, but if you're talking</p> <p>3 about with regard to this matter, I don't recall.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. What does NERD stand for?</p> <p>6 MR. SHUMAKER: Object to the form.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. Do you know what NERD -- do you --</p> <p>9 have you heard the phrase "NERD" in connection</p> <p>10 with the New Energy to Reinvest Diversity Fund?</p> <p>11 A. Yeah. When you said "NERD," it</p> <p>12 stands for a kid who was like me when he was</p> <p>13 growing up, sort of a geek.</p> <p>14 But if you're talking about the</p> <p>15 acronym related to something affiliated with the</p> <p>16 Governor, then, yes, I've heard of that.</p> <p>17 Q. All right.</p> <p>18 Do you know what it is -- let me</p> <p>19 ask --</p> <p>20 A. I --</p> <p>21 Q. -- it this way: What's your</p> <p>22 understanding of what it is?</p>	<p style="text-align: right;">Page 351</p> <p>1 know whether any of the SWAP parties have donated?</p> <p>2 A. No, I do not.</p> <p>3 Q. If you had access to the</p> <p>4 information -- if you have access to the</p> <p>5 information, would you be willing to disclose the</p> <p>6 donors?</p> <p>7 A. I don't have access to the</p> <p>8 information, and I think that's a question -- if</p> <p>9 it's a fund run by someone else, that's their</p> <p>10 decision. I don't have access to any information</p> <p>11 related to the NERD Fund.</p> <p>12 Q. Would you be willing to ask the</p> <p>13 Governor to have that information disclosed?</p> <p>14 A. Sitting here today, no.</p> <p>15 Q. Have any of your expenses as</p> <p>16 emergency manager been paid or reimbursed by the</p> <p>17 NERD Fund?</p> <p>18 A. Not --</p> <p>19 MR. SHUMAKER: I think we're getting</p> <p>20 pretty far afield here -- here, Counsel. This is</p> <p>21 not really --</p> <p>22 MS. LEVINE: Yeah, it is --</p>



<p style="text-align: right;">Page 352</p> <p>1 MR. SHUMAKER: It's starting to 2 get -- 3 MS. LEVINE: -- I'll be bring it 4 back. 5 MR. SHUMAKER: Okay. 6 THE WITNESS: What I read in the 7 paper is that my housing is paid for by the 8 NERD Fund. I've never seen the lease, and I've 9 never seen a payment. 10 That's the extent of what I know of 11 the NERD Fund and its involvement with me. 12 MS. LEVINE: This is Exhibit 20. 13 MR. SHUMAKER: Do you have an extra 14 copy? 15 MS. LEVINE: Yeah, one. 16 MR. SHUMAKER: Thank you. 17 - - - 18 (Whereupon, an e-mail string was 19 marked, for identification purposes, 20 as Orr Deposition Exhibit 21 Number 20.) 22 - - -</p>	<p style="text-align: right;">Page 354</p> <p>1 A. Yeah, I do. Yes, I do. 2 Q. And it discusses the base 3 compensation of \$275,000 a year? 4 A. Yes, among other things. 5 Q. And contract period of -- include -- 6 including a contract period not to 7 exceed 18 months? 8 A. Yes. 9 Q. Did your final contract have an 10 incentive if the job was completed sooner? 11 A. No. 12 Q. It also discusses an intent to raise 13 private funding for performance measure/outcome 14 bonus? 15 A. Yes. 16 Q. Does your final contract have a 17 performance measure/outcome bonus? 18 A. No. We never talked about it yet. 19 Q. Did you discuss the private funding 20 referenced in that e-mail? 21 A. No. 22 Q. Did you under -- do you -- did you</p>
<p style="text-align: right;">Page 353</p> <p>1 MS. LEVINE: For -- for the record, 2 the -- the Bates number is JD-RD-0000334. 3 (Whereupon, the witness reviews the 4 material provided.) 5 BY MS. LEVINE: 6 Q. Mr. Orr, there are two e-mails on the 7 first page of this document. 8 A. Um-hum, yes. 9 Q. I'm going to ask you to look at the 10 second e-mail. 11 It's from -- 12 A. Yes. 13 Q. -- Richard Baird to you? 14 A. Yes. 15 Q. Dated February 12, 2013, correct? 16 A. Yes. 17 Q. And it discusses -- well, let me ask 18 the question. 19 Is this e-mail discussing your 20 potential retention as the emergency manager? 21 A. Yes, it appears to do that. 22 Q. Do you recall receiving this e-mail?</p>	<p style="text-align: right;">Page 355</p> <p>1 have any understanding of what the source of that 2 private funding would be? 3 A. Not at all. 4 Q. It discusses a sublease for a 5 furnished apartment in the City? 6 A. Yes. 7 Q. And that made it to the final 8 contract? 9 A. Actually, it's not in my contract, I 10 believe. 11 Q. But you have a subleased apartment in 12 the City -- or a leased apartment in the City? 13 A. I -- I have an apartment that I stay 14 in in the City; the arrangement I -- I can't speak 15 to. 16 Q. How did you learn that there was an 17 apartment available to you? 18 A. I believe the first day, I stayed in 19 a hotel room, and the next day, someone -- and I 20 really can't tell you if it was on behalf of the 21 State or if it was someone related to the hotel -- 22 when I came back from work that day, took me to --</p>



<p style="text-align: right;">Page 356</p> <p>1 and my suitcase to the apartment.</p> <p>2 Q. Is it your understanding that the</p> <p>3 City's paying for that apartment?</p> <p>4 A. I -- I don't know who's paying for</p> <p>5 the apartment.</p> <p>6 Q. And you get your expenses reimbursed?</p> <p>7 A. I haven't had any of my expenses</p> <p>8 reimbursed.</p> <p>9 Q. Does anybody -- who pays for your</p> <p>10 flying, for example, back and forth from D.C.?</p> <p>11 A. I do.</p> <p>12 Q. And that -- and none of those have</p> <p>13 been reimbursed?</p> <p>14 A. Not a dime.</p> <p>15 Q. And you get a security detail?</p> <p>16 A. Yes.</p> <p>17 Q. 24/7?</p> <p>18 A. Certainly -- well, they say 24/7, but</p> <p>19 I -- they walk me to my apartment and lock me in,</p> <p>20 and then I see them in the morning. So I assume</p> <p>21 it's 24/7. That's -- that's my detail.</p> <p>22 Q. Do you know who's paying for that</p>	<p style="text-align: right;">Page 358</p> <p>1 MS. LEVINE: I have no further</p> <p>2 questions. Thank you.</p> <p>3 THE WITNESS: Okay.</p> <p>4 THE VIDEOGRAPHER: Go off the record?</p> <p>5 Going off the record at 11:50.</p> <p>6 - - -</p> <p>7 (Whereupon, a discussion was held off</p> <p>8 the record.)</p> <p>9 - - -</p> <p>10 THE VIDEOGRAPHER: Going back on the</p> <p>11 record at 11:53.</p> <p>12 - - -</p> <p>13 EXAMINATION (CONTINUED) BY COUNSEL</p> <p>14 FOR RETIREES COMMITTEE</p> <p>15 - - -</p> <p>16 BY MR. ULLMAN:</p> <p>17 Q. Good morning, Mr. Orr.</p> <p>18 A. Good morning.</p> <p>19 Q. As you know, I'm Anthony Ullman</p> <p>20 and -- for the Retirees Committee from Dentons,</p> <p>21 and I have some additional questions for you this</p> <p>22 morning.</p>
<p style="text-align: right;">Page 357</p> <p>1 security detail?</p> <p>2 A. I do not, but they are Michigan State</p> <p>3 Police; they're not private.</p> <p>4 Q. So there was no discussion, though,</p> <p>5 back in or around February of 2013 with regard to</p> <p>6 the source of any funding to help subsidize the</p> <p>7 cost of the emergency manager?</p> <p>8 A. No. In fact, I think there's an</p> <p>9 e-mail that has been produced somewhere where I</p> <p>10 say back I -- you know, the -- the -- something to</p> <p>11 the effect the job is the job is, and I'm not</p> <p>12 expecting anything supplemental.</p> <p>13 Q. No, I'm not asking you if you were</p> <p>14 expecting anything supplemental. I'm asking the</p> <p>15 source of the funding to pay for you --</p> <p>16 A. Oh, I've --</p> <p>17 Q. -- as a --</p> <p>18 A. -- had -- yeah, I -- I -- I -- my</p> <p>19 checks come from a -- a Michigan State Government</p> <p>20 Web site. I assume that's from the State, but I</p> <p>21 have no idea if -- if there's any other</p> <p>22 arrangement -- my direct deposits.</p>	<p style="text-align: right;">Page 359</p> <p>1 A. Good morning, Mr. Ullman.</p> <p>2 Q. First of all, I'd like to put a</p> <p>3 document before you which we will mark as</p> <p>4 Exhibit --</p> <p>5 MR. ULLMAN: Are we up to 21?</p> <p>6 THE COURT REPORTER: Yes.</p> <p>7 THE WITNESS: Twenty-one.</p> <p>8 MR. ULLMAN: Twenty-one. I need a</p> <p>9 sticker for that.</p> <p>10 - - -</p> <p>11 (Whereupon, Jones Day Presentation to</p> <p>12 the City of Detroit; Detroit,</p> <p>13 Michigan, January 29, 2013 was</p> <p>14 marked, for identification purposes,</p> <p>15 as Orr Deposition Exhibit</p> <p>16 Number 21.)</p> <p>17 - - -</p> <p>18 MR. ULLMAN: Here's a copy for you.</p> <p>19 I want to get rid of my extras.</p> <p>20 MR. SHUMAKER: Let me state on the</p> <p>21 record a couple of things. One, I'm not sure</p> <p>22 technically whether the Retirees even joined</p>



<p style="text-align: right;">Page 360</p> <p>1 ASME's motion, so I'm not even certain that it's 2 proper that Mr. Ullman be asking questions. 3 Secondly, this is -- Mr. Ullman can 4 identify it, but this document is the Jones Day 5 presentation to the City of Detroit on January 6 29th, 2013. 7 I don't see how that funnels into the 8 request that was made to Judge Rolls -- Rhodes 9 regarding three hours of deposition testimony 10 concerning Mr. Orr's communications with State 11 officials in the presence of legal counsel since 12 his appointment as emergency manager. 13 That said, this document was produced 14 after the deposition, and I'm going to let you go 15 into it. But I am going to say -- 16 MR. ULLMAN: I -- 17 MR. SHUMAKER: -- within reason -- 18 MR. ULLMAN: -- I don't -- I don't 19 intend to dwell very long on it -- 20 MR. SHUMAKER: Okay. 21 MR. ULLMAN: -- and I appreciate your 22 recognition. This was produced after the last</p>	<p style="text-align: right;">Page 362</p> <p>1 time; is that correct? 2 A. Yes, when I said the end of January. 3 It's commonly referred to as a "pitch book." 4 Q. Okay. And you -- you were part of 5 the Jones Day team, and your picture appears on 6 Page 3 of this document; is that right? 7 A. Yes, I was part of the presentation 8 team, yes. 9 Q. Okay. And did you have any role in 10 the preparation of this document? 11 A. Yes. I mean, it -- it was a 12 collaborative effort from a number of different 13 attorneys in the Jones Day law firm, but I was 14 involved in that process as well. 15 Q. Okay. And did you review the 16 document -- can we refer to this as the pitch 17 book? 18 A. Yes. 19 Q. Okay. Did you -- did you review the 20 pitch book, Exhibit 21, before it -- before the 21 presentation? 22 A. Yes.</p>
<p style="text-align: right;">Page 361</p> <p>1 deposition. 2 BY MR. ULLMAN: 3 Q. Okay. Mr. -- 4 THE COURT REPORTER: I have to mark 5 it there first. 6 BY MR. ULLMAN: 7 Q. Okay. Mr. Orr, what we've marked as 8 Exhibit 21 is entitled, Presentation to the City 9 of Detroit; Detroit, Michigan, January 29, 2013 10 from Jones Day. 11 Can you identify this document for 12 me, Mr. Orr? 13 A. Yes. 14 Q. Okay. And what is it, please? 15 A. I believe it's a slide deck 16 presentation to the City of Detroit for a -- in 17 response to a solicitation the firm received for 18 representation regarding potential restructuring 19 work on behalf of the City dated January 29th, 20 2013 marked confidential. 21 Q. Okay. And this is in connection with 22 the presentation that you testified about last</p>	<p style="text-align: right;">Page 363</p> <p>1 Q. Okay. And I just note -- I'm not 2 going to go into my particular specifics here, but 3 if, for example, just picking one, if you look at 4 Page 18, there's what's called Speaker Notes, 5 which -- I assume this was a PowerPoint 6 presentation, so someone would be talking -- 7 speaking orally as a slide goes on the screen; is 8 that right? 9 A. Well, it was -- it -- it -- it -- it 10 could have been a PowerPoint. As I recall, we did 11 not -- there weren't PowerPoint capabilities, so 12 we intended to work off the document -- 13 Q. Um-hum. 14 A. -- but the discussion, within a 15 minute or two, veered away from the document and 16 more was a dialogue, so . . . 17 Q. Okay. So what we have as Exhibit 21 18 was the -- the internal -- at least was this 19 internal version of the pitch book; in other 20 words, were there speaker notes? 21 A. Yes, were the speaker -- this -- 22 the -- the speaker notes were not presented to --</p>



<p style="text-align: right;">Page 364</p> <p>1 Q. That's --</p> <p>2 A. -- the review team.</p> <p>3 Q. -- that's what I wanted to clarify.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And when you say that you</p> <p>6 reviewed the document before -- before it went out</p> <p>7 in its final form to the -- to the people you were</p> <p>8 pitching to at the meeting, you know, with the</p> <p>9 City, you reviewed the speaker notes as well?</p> <p>10 A. Mr. Ullman, to be honest, I -- I</p> <p>11 reviewed -- I can't be -- this document was not</p> <p>12 generated solely by me --</p> <p>13 Q. I understand.</p> <p>14 A. -- it was generated by a team effort.</p> <p>15 I think I reviewed a number of</p> <p>16 different drafts of the document. I'm not -- I --</p> <p>17 I believe I reviewed the final draft of the pitch</p> <p>18 book that went out. I am not sure I reviewed the</p> <p>19 final draft of the draft of the speaker notes,</p> <p>20 because at that time, I think I was involved in</p> <p>21 the actual mediation of another matter. So I was</p> <p>22 doing this in between some other matters.</p>	<p style="text-align: right;">Page 366</p> <p>1 who should be on the team, who should be on the</p> <p>2 representation team, what -- what potential legal</p> <p>3 services might be necessary.</p> <p>4 And, for instance, at the back, you</p> <p>5 have team members, things along those lines,</p> <p>6 but -- but there was no specific section that was</p> <p>7 dedicated solely to me.</p> <p>8 Q. Okay. I'm not asking whether it was</p> <p>9 dedicated solely to you, but whether you had</p> <p>10 primary responsibility for preparing.</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. No.</p> <p>14 Q. And I think you indicated that the</p> <p>15 slides themselves were given over to the City at</p> <p>16 the meeting or -- was it the City or the State?</p> <p>17 I'm trying to remember, did you --</p> <p>18 A. It -- it was a review team composed</p> <p>19 of I think --</p> <p>20 Q. Buckfire was there?</p> <p>21 A. -- the -- the investment bankers were</p> <p>22 there --</p>
<p style="text-align: right;">Page 365</p> <p>1 But generally speaking, I'm familiar</p> <p>2 with this document.</p> <p>3 Q. Okay. And was there -- was there</p> <p>4 anything in the document that you disagreed with?</p> <p>5 MR. SHUMAKER: Object to the form.</p> <p>6 THE WITNESS: Without reviewing it</p> <p>7 today, generally speaking, no.</p> <p>8 BY MR. ULLMAN:</p> <p>9 Q. Okay. And can you tell me were there</p> <p>10 any particular portions of Exhibit 21 that you had</p> <p>11 primary responsibility for preparing?</p> <p>12 A. No. The -- the document evolved</p> <p>13 through -- as you are probably familiar with the</p> <p>14 pitch books for attorneys seeking legal work, the</p> <p>15 document evolves as you go through it, a number of</p> <p>16 conversations, e-mails with a number of different</p> <p>17 sources.</p> <p>18 I don't recall being -- I don't</p> <p>19 recall looking at this document and saying, oh, I</p> <p>20 only did Pages 23 through 23 [verbatim], for</p> <p>21 instance. I may have commented and edited</p> <p>22 different pages. I may have made suggestions on</p>	<p style="text-align: right;">Page 367</p> <p>1 Q. Yeah.</p> <p>2 A. -- for the City who had been</p> <p>3 retained, the City representatives were there and</p> <p>4 the State representatives were there.</p> <p>5 Q. Okay. I'll talk -- call that the --</p> <p>6 the review team --</p> <p>7 A. Review team --</p> <p>8 Q. -- is that the term you like?</p> <p>9 Okay --</p> <p>10 A. -- yeah.</p> <p>11 Q. -- so as I understand what you're</p> <p>12 saying, the -- the -- the slides themselves were</p> <p>13 present -- given over to the review team as a --</p> <p>14 a -- a bound --</p> <p>15 A. Yes.</p> <p>16 Q. -- volume or attached in some way?</p> <p>17 A. Yes, the -- the -- the slide deck as</p> <p>18 the pitch book was given to the review team.</p> <p>19 Q. Okay. And then, at the presentation,</p> <p>20 were -- how did that work? Did you -- did people</p> <p>21 sort of go through the slides orally and then --</p> <p>22 and -- and make comments as they were going</p>



<p style="text-align: right;">Page 368</p> <p>1 through the different pages in the pitch book?</p> <p>2 A. No. As I recall, we handed out the</p> <p>3 pitch book and began sort of going through the</p> <p>4 slide, but within the first page or two, the</p> <p>5 discussion exceeded the slides. And we really</p> <p>6 ended up not going through the pitch book in any</p> <p>7 meaningful manner --</p> <p>8 Q. Okay.</p> <p>9 A. -- at the presentation.</p> <p>10 Q. Okay. And this -- at the time of the</p> <p>11 presentation, you were indeed still part of</p> <p>12 Jones Day --</p> <p>13 A. Yes.</p> <p>14 Q. -- and part of the pitch team?</p> <p>15 A. Yes, absolutely.</p> <p>16 Q. Okay.</p> <p>17 Okay. I'm going to mark another</p> <p>18 document, Mr. Orr, and ask if you've ever seen</p> <p>19 this, which is Number 22.</p> <p>20 A. Two.</p> <p>21 MR. ULLMAN: Here's a copy for you,</p> <p>22 two copies for you, and an extra, and an extra. I</p>	<p style="text-align: right;">Page 370</p> <p>1 A. Um-hum.</p> <p>2 Q. If you could look at Page 6.</p> <p>3 A. Um-hum.</p> <p>4 Q. Okay. What we --</p> <p>5 MR. SHUMAKER: Of the -- of the</p> <p>6 actual document?</p> <p>7 MR. ULLMAN: Of the -- yes. I'm</p> <p>8 sorry, yeah.</p> <p>9 And just for clarity, this document</p> <p>10 bears Bates Number DTMI00129416, and Page 6 of the</p> <p>11 document bears the Bates number ending in 422.</p> <p>12 THE WITNESS: Um-hum.</p> <p>13 BY MR. ULLMAN:</p> <p>14 Q. Okay. And this page, in general, is</p> <p>15 entitled, The Mayor's plan includes strategies to</p> <p>16 implement changes that will significantly reduce</p> <p>17 general fund long-term liabilities.</p> <p>18 I'd like you to focus on Number -- or</p> <p>19 Letter (b) --</p> <p>20 A. Yes.</p> <p>21 Q. -- you see 3(b)?</p> <p>22 A. Um-hum.</p>
<p style="text-align: right;">Page 369</p> <p>1 don't want to bring these back with me is all.</p> <p>2 - - -</p> <p>3 (Whereupon, City of Detroit --</p> <p>4 Restructuring Plan, Mayor's</p> <p>5 Implementation Progress Report was</p> <p>6 marked, for identification purposes,</p> <p>7 as Orr Deposition Exhibit</p> <p>8 Number 22.)</p> <p>9 - - -</p> <p>10 THE WITNESS: Thank you.</p> <p>11 BY MR. ULLMAN:</p> <p>12 Q. Okay. What we've marked as</p> <p>13 Exhibit 22, Mr. Orr, is entitled, City of Detroit</p> <p>14 -- Restructuring Plan, Mayor's Implementation</p> <p>15 Progress Report, with the date of March 2013.</p> <p>16 Have you ever seen this document</p> <p>17 before?</p> <p>18 A. I think I've seen it before, but I</p> <p>19 think that was after I became emergency manager.</p> <p>20 Q. Okay. That's fine.</p> <p>21 And what I'd like to do is try to</p> <p>22 just ask you about one page of this.</p>	<p style="text-align: right;">Page 371</p> <p>1 Q. It says, Pension unfunded</p> <p>2 liabilities, and the first bullet point says,</p> <p>3 Approximately 650 million of unfunded liability as</p> <p>4 of fiscal year 2012, of which only 250 million</p> <p>5 relates to general fund.</p> <p>6 A. Yes, I see that.</p> <p>7 Q. And do you have an understanding as</p> <p>8 to what's being said there and what that reference</p> <p>9 is?</p> <p>10 MR. SHUMAKER: Objection: foundation.</p> <p>11 THE WITNESS: Yeah. I was obviously</p> <p>12 not responsible for drafting, developing or the</p> <p>13 due diligence behind the document. The document</p> <p>14 speaks for itself.</p> <p>15 But what I think is being said there</p> <p>16 is that the unfunded liability for the -- and I</p> <p>17 assume it's speaking to both pension funds; it may</p> <p>18 be one or the other --</p> <p>19 BY MR. ULLMAN:</p> <p>20 Q. Um-hum.</p> <p>21 A. -- but the unfunded liability for</p> <p>22 fiscal year 2012 is 250, and 250 million of that</p>



<p style="text-align: right;">Page 372</p> <p>1 is somehow an obligation of the general fund.</p> <p>2 Q. Okay. Did you say 250? It's -- you</p> <p>3 meant to say 650, right?</p> <p>4 A. No, no. It's 650 total --</p> <p>5 Q. Right.</p> <p>6 A. -- but 250 million of that is an</p> <p>7 obligation of the general fund.</p> <p>8 Q. You had misspoken and said 250 both</p> <p>9 times --</p> <p>10 A. Oh, I'm sorry --</p> <p>11 Q. -- so --</p> <p>12 A. -- oh, no -- okay. 650 and 250, I'm</p> <p>13 sorry. I was --</p> <p>14 Q. Okay.</p> <p>15 A. -- thinking ahead, thinking quicker</p> <p>16 than my mouth moved.</p> <p>17 Q. Okay. And as I -- I understand that</p> <p>18 the 650 million that's referred here -- to here by</p> <p>19 the Mayor corresponds pretty closely, if I recall,</p> <p>20 to the \$644 million figure that was referred to in</p> <p>21 the June 14th proposal; is that right?</p> <p>22 A. I would -- I -- yes, I -- I would</p>	<p style="text-align: right;">Page 374</p> <p>1 would probably say is more accurate.</p> <p>2 That's the number that's cited in the</p> <p>3 June 14th proposal, right?</p> <p>4 A. Yeah, they may have -- they may have</p> <p>5 rounded up here --</p> <p>6 Q. Okay.</p> <p>7 A. -- but we'll -- it's -- it's</p> <p>8 approximately that amount.</p> <p>9 Q. Okay. Is it correct that for the</p> <p>10 approximately 644 million unfunded pension</p> <p>11 liability that you refer to in the June 14th</p> <p>12 proposal, that some portion of that is allocable</p> <p>13 to a payment source other than the general fund?</p> <p>14 A. I think that's correct.</p> <p>15 Q. Okay. And what are those --</p> <p>16 what is -- what are the other payment sources to</p> <p>17 which the total 650 -- or I'm sorry -- 644 million</p> <p>18 is allocable other than the general fund?</p> <p>19 A. Well, there are other sources, but it</p> <p>20 could be principally related to the Water</p> <p>21 department.</p> <p>22 Q. Okay. And what is your understanding</p>
<p style="text-align: right;">Page 373</p> <p>1 think it does --</p> <p>2 Q. Okay.</p> <p>3 A. -- I'm -- I'm -- here again, I'm</p> <p>4 not -- I'm assuming it -- it speaks for itself and</p> <p>5 it's facially correct; but, yes, I would think</p> <p>6 that's the reference.</p> <p>7 Q. Okay. And so can you tell me what --</p> <p>8 what is your understanding when the Mayor says</p> <p>9 here that 250 million relates to the general fund,</p> <p>10 what the other 300 --</p> <p>11 A. 400.</p> <p>12 Q. -- 400 million relates to? And</p> <p>13 what's -- what is the distinction being drawn</p> <p>14 between what relates to the general fund versus</p> <p>15 what relates to something other than the general</p> <p>16 fund?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Well, is it correct that -- that some</p> <p>19 portion -- let's just stick with the -- we can use</p> <p>20 the \$644 million number --</p> <p>21 A. Um-hum.</p> <p>22 Q. -- because I think that's what you</p>	<p style="text-align: right;">Page 375</p> <p>1 as to how much of the approximately 644 million</p> <p>2 unfunded pension liability relates to liability</p> <p>3 for personnel from the Department of Water and</p> <p>4 Sewer?</p> <p>5 A. Approximately that difference.</p> <p>6 Q. Okay. So it's about 450 million?</p> <p>7 A. Approximately, yeah.</p> <p>8 Q. Okay. And I'm trying to recall from</p> <p>9 your last testimony.</p> <p>10 For the -- the pension monies that</p> <p>11 are due relative to personnel from the Department</p> <p>12 of Water and Sewer, are the pension payments made</p> <p>13 directly by the Department of Water Sewer to the</p> <p>14 retirement systems, or is the money paid first by</p> <p>15 the retirement -- I'm sorry -- by the Water and</p> <p>16 Sewer Department to the City, which then transmits</p> <p>17 it to the retirement system, or is there another</p> <p>18 mechanism for the payment?</p> <p>19 MR. SHUMAKER: Objection to form.</p> <p>20 THE WITNESS: I believe it's the -- I</p> <p>21 believe it's the latter.</p> <p>22</p>



<p style="text-align: right;">Page 376</p> <p>1 BY MR. ULLMAN:</p> <p>2 Q. "The latter" meaning there's</p> <p>3 another --</p> <p>4 A. To the City --</p> <p>5 Q. -- payment mechanism?</p> <p>6 A. -- no, no, no, not -- the latter --</p> <p>7 not the -- not the discount; "the latter" meaning</p> <p>8 to the City and then to the fund.</p> <p>9 Q. Okay.</p> <p>10 A. I could be wrong, because may be --</p> <p>11 but I believe it's -- I believe it's that process.</p> <p>12 Q. Okay. I'm asking because I thought I</p> <p>13 had seen some other document which said that</p> <p>14 the -- maybe it's the same thing -- the City gets</p> <p>15 the money or has the right to bill the -- the</p> <p>16 funds or the -- the liabilities to the Department</p> <p>17 -- Department of Water and Sewer, and then the</p> <p>18 Department of Water and Sewer would pay the City.</p> <p>19 That's your understanding?</p> <p>20 A. Yeah, that -- that's -- that's what I</p> <p>21 was saying; that's the approximate mechanism.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 378</p> <p>1 thought that the actual unfunded liability was --</p> <p>2 was higher than the 644 number and could be as</p> <p>3 much as 3.5 billion or something like that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. My question is, does the --</p> <p>6 does the -- is the proportion of unfunded</p> <p>7 liability allocable to the general fund versus the</p> <p>8 Department of Water Sewer personnel constant if</p> <p>9 you -- if you use a higher liability figure?</p> <p>10 In other words --</p> <p>11 A. If we went up to 3.5 --</p> <p>12 Q. Yeah, yeah --</p> <p>13 A. -- million, would it be --</p> <p>14 Q. -- would the Department of Water and</p> <p>15 Sewer still be approximately 38 percent of the</p> <p>16 total unfunded liability?</p> <p>17 A. I'm -- I'm not sure. I would think</p> <p>18 that a rough estimate might be. But as I said, I</p> <p>19 think, in September 16th, part of those</p> <p>20 calculations had to do with a number of factors,</p> <p>21 so I don't want to say that my testimony is as</p> <p>22 exactly proportioned.</p>
<p style="text-align: right;">Page 377</p> <p>1 A. I could go back and check it to be</p> <p>2 sure, but I think that's the approximate mechanism</p> <p>3 as I understand it.</p> <p>4 Q. Okay. Now, by my math -- I make no</p> <p>5 representations as to my math, but just looking at</p> <p>6 the numbers, it looked -- actually, do I have a</p> <p>7 calculator here? I don't think I do.</p> <p>8 What percentage is 250 over 650? I</p> <p>9 actually didn't do the math.</p> <p>10 A. Four -- it's 40-some odd.</p> <p>11 Q. It's 40-some -- yeah, we can get it</p> <p>12 precisely.</p> <p>13 Zero? Oh.</p> <p>14 250 divided by 6 -- let's say 650 --</p> <p>15 shoot, I didn't do that right. I apologize. Let</p> <p>16 me try to clear this and do it again.</p> <p>17 250 divided -- 6. This isn't right.</p> <p>18 Okay. It looks like about</p> <p>19 38 percent.</p> <p>20 A. Right.</p> <p>21 Q. Okay. You recall that -- that during</p> <p>22 the last deposition, you indicated that you</p>	<p style="text-align: right;">Page 379</p> <p>1 Q. Okay. And is it correct that the</p> <p>2 Department of Water and Sewer itself, I think you</p> <p>3 indicated last time, is run as a separate entity,</p> <p>4 even though it's, I think, technically part of the</p> <p>5 City, but it has its own books and records?</p> <p>6 A. The Department of Water and Sewer is</p> <p>7 a department of the City both technically and</p> <p>8 practically. Pursuant to Judge Cox's order, it</p> <p>9 has certain functions, which it can run</p> <p>10 semiautonomously, but it remains a department of</p> <p>11 the City.</p> <p>12 Q. Okay. And as -- as a separate --</p> <p>13 as -- as an entity or a department of the City</p> <p>14 that keeps its own books and records, the</p> <p>15 Department of Water and Sewer itself shows a</p> <p>16 profit for its own operations; is that right?</p> <p>17 A. I'm not sure it shows a profit for</p> <p>18 its own operations. I -- I'd have to look into</p> <p>19 the word "profit" --</p> <p>20 Q. Okay.</p> <p>21 A. -- but -- but it -- it stands -- it</p> <p>22 generates revenue of its own and pays its</p>

<p style="text-align: right;">Page 380</p> <p>1 obligations as they become due. 2 Q. Okay. And is it correct the 3 Department of Water and Sewer also has the 4 ability, if it -- if it exercises it, to increase 5 its revenues by raising the rates? 6 A. I'm not sure. There are a number of 7 things that go into rate increases -- 8 Q. Um-hum. 9 A. -- it -- it might well have that 10 capacity. 11 You also have to consider the impact 12 on customers, but I don't want to mislead you. It 13 does have some capacity, yes. 14 Q. Okay. Now, prior to the filing of 15 the bankruptcy petition on July 18th, did you have 16 any discussions with the Governor concerning the 17 allocation of the unfunded pension liability 18 between the general fund and the Department of 19 Water and Sewer? 20 A. No. 21 Q. Did you have any such discussions 22 with the Governor after the filing of the</p>	<p style="text-align: right;">Page 382</p> <p>1 - - - 2 EXAMINATION (CONTINUED) BY COUNSEL 3 FOR UNITED AUTO WORKERS UNION 4 - - - 5 BY MR. DECHIARA: 6 Q. Good afternoon, Mr. Orr. 7 Peter DeChiara from the law firm of Cohen, Weiss 8 and Simon LLP for the United Auto Workers 9 International Union. 10 A. Good afternoon -- well, good 11 afternoon. 12 Q. Is -- is it your testimony that you 13 don't know who's paying for your housing in 14 Detroit while you serve as emergency manager? 15 A. Yes. I'd -- I've read in the papers 16 that it's the aforementioned NERD Fund, but I've 17 never seen a list -- a lease, and I've never 18 really inquired into it. 19 Q. Okay. You testified when Mr. Ullman 20 was questioning you about a meeting at which there 21 was discussion in connection with Exhibit 21, 22 which is what you refer to as "the pitch book."</p>
<p style="text-align: right;">Page 381</p> <p>1 bankruptcy petition? 2 A. No. 3 MR. ULLMAN: Yeah. Good idea. 4 Okay. Greg, could I ask you to 5 produce the final version of the pitch book, 6 the -- the one that was actually given over to the 7 review team? 8 MR. SHUMAKER: We'll look into it. 9 I -- I believe that has been produced, but 10 we'll -- 11 MR. ULLMAN: Okay. 12 MR. SHUMAKER: -- certainly check. 13 MR. ULLMAN: Okay. I appreciate it. 14 Okay. I think, at least for the 15 moment, that's all I have. 16 THE WITNESS: Okay. Thank you. 17 MR. ULLMAN: Peter? 18 I'll pass the baton. 19 20 21 22</p>	<p style="text-align: right;">Page 383</p> <p>1 Do you remember that testimony? 2 A. Yes. 3 Q. Do you -- do you know whether 4 Richard Baird was present when Jones Day made its 5 presentation? 6 A. Yes, he was present. 7 Q. Do you recall whether he said 8 anything, whether statements or questions, at the 9 meeting? 10 A. Oh, I think he -- he asked some 11 questions, yes. 12 Q. What did he ask? 13 A. I don't recall with specificity; 14 generally about the firm's qualifications to do 15 the work. 16 Q. Was there discussion at the meeting 17 about accrued pension liabilities of the City of 18 Detroit? 19 A. Not that I recall. 20 Q. Was there any discussion about the 21 Michigan Constitution? 22 A. No.</p>



<p style="text-align: right;">Page 384</p> <p>1 Q. Did you have any one-on-one or</p> <p>2 less-than-the-full-room-of-people conversations</p> <p>3 immediately following the pitch presentation with</p> <p>4 any of the -- at -- people who were attending on</p> <p>5 behalf of the City or the State?</p> <p>6 A. No. The only conversations I had</p> <p>7 were, as a tested to -- testified to last time,</p> <p>8 telephone conversations with Mr. Baird that</p> <p>9 followed up. But we had no other conversations</p> <p>10 with anyone else.</p> <p>11 Q. When was the next time after</p> <p>12 the -- well, was the presentation that Jones Day</p> <p>13 made to the City on January 29th, 2013?</p> <p>14 A. I believe so.</p> <p>15 Q. Okay. When would -- was the next</p> <p>16 time -- when, after January 29th, 2013, did you</p> <p>17 speak to Mr. Baird?</p> <p>18 A. I think it was a series of e-mail</p> <p>19 exchanges that we went through on September 16th,</p> <p>20 which was in a day or two after -- it was the 30th</p> <p>21 of January or the 1st of February. It's that</p> <p>22 whole discussion chain.</p>	<p style="text-align: right;">Page 386</p> <p>1 conversations occurred within a day or two after.</p> <p>2 And -- and I haven't read my deposition or looked</p> <p>3 at it, but I recall there was a call made.</p> <p>4 I was asked; I said I'm not</p> <p>5 interested; they asked -- I assume it was</p> <p>6 Mr. Baird asked that I at least talk to them; and</p> <p>7 there was that whole discussion chain that</p> <p>8 occurred after that.</p> <p>9 BY MR. DECHIARA:</p> <p>10 Q. Is it accurate that you were</p> <p>11 appointed as EFM on March 15th, 2013?</p> <p>12 A. No.</p> <p>13 Q. When were you appointed EFM?</p> <p>14 A. I think my appointment was March 25th</p> <p>15 or 26th as EFM, yes.</p> <p>16 Q. You were appointed EFM before you</p> <p>17 were appointed EM, correct?</p> <p>18 A. Yeah. I believe the statute changed.</p> <p>19 Public Act 4, I believe, had been invalidated, so</p> <p>20 it was under Public Act 72, which described an</p> <p>21 EFM. And then under Public Act 436, you become an</p> <p>22 EM.</p>
<p style="text-align: right;">Page 385</p> <p>1 Q. Okay. So within a day or two of the</p> <p>2 pitch book presentation by Jones Day, Mr. Baird</p> <p>3 calls Jones Day to make inquiries about having you</p> <p>4 serve -- having you possibly serve as emergency --</p> <p>5 emergency manager, correct?</p> <p>6 A. Yeah, I think it's that discussion,</p> <p>7 yes.</p> <p>8 Q. Okay. And did you speak to Mr. Baird</p> <p>9 on that occasion? And when I say "that occasion,"</p> <p>10 I'm referring to one or two days after</p> <p>11 January 29th.</p> <p>12 A. Yes. I think, on September 16th, we</p> <p>13 discussed that he reached out to Steve Brogan --</p> <p>14 MR. SHUMAKER: Just so we're clear --</p> <p>15 I don't mean to interrupt -- September 16th was</p> <p>16 your deposition.</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. SHUMAKER: I want you to make</p> <p>19 sure you get your dates right in your testimony.</p> <p>20 THE WITNESS: Oh, you -- oh, you</p> <p>21 mean -- I'm -- let me be clear. As we discussed</p> <p>22 on September 16th during my deposition, that those</p>	<p style="text-align: right;">Page 387</p> <p>1 Q. Okay. So my question was -- and</p> <p>2 maybe your answer is the same, but just -- I just</p> <p>3 want to be sure -- what is the date you were</p> <p>4 appointed EFM?</p> <p>5 A. I believe it was the 25th or the</p> <p>6 26th.</p> <p>7 Q. Of March --</p> <p>8 A. March --</p> <p>9 Q. -- 2013?</p> <p>10 A. -- March 2013.</p> <p>11 Q. Okay. Before you were appointed EFM,</p> <p>12 did you have any written exchanges -- and by</p> <p>13 "written exchanges," I mean e-mails, letters,</p> <p>14 exchange of memos -- with the Governor?</p> <p>15 A. No.</p> <p>16 Q. Did you have any such exchanges</p> <p>17 before you were appointed EFM with</p> <p>18 Treasurer Dillon?</p> <p>19 A. No -- well, strike that.</p> <p>20 I may have had an exchange with</p> <p>21 Treasurer Dillon or the Governor just a -- a</p> <p>22 courtesy, you know, hear you're a candidate, hope</p>

<p style="text-align: right;">Page 388</p> <p>1 you're interested, hope you'll consider this, but 2 nothing substantive. There may have been courtesy 3 exchanges. 4 Q. Okay. So let me -- let me go back. 5 A. Right. 6 Q. So let me ask just about the 7 Governor. 8 A. Right. 9 Q. So to the best of your 10 recollection -- well, strike that. 11 Is it your testimony that you did 12 have written exchanges with the Governor before 13 you became EFM? 14 A. I believe so. 15 Q. Okay. To the best of your ability, 16 can you tell me what those exchanges were? 17 A. As I said, they were courtesy -- 18 there were no substantive discussions; they were 19 more like one line, hear you're interested, hope 20 you consider this, something along those lines. 21 Q. Okay. And were those e-mails? 22 A. There may have been e-mails.</p>	<p style="text-align: right;">Page 390</p> <p>1 over a cell phone. 2 A. Yeah, that's what I'm talking 3 about -- 4 Q. Okay. 5 A. -- I -- I -- there could have been a 6 voice mail, and there could have been an e-mail or 7 two, or it could have been a text. It wasn't, 8 like, every day or every week. I just seem to 9 recall that there was a text or two and a voice 10 mail or two after the meeting -- after -- or after 11 discussions with Rich. 12 Q. Okay. 13 MR. DECHIARA: The UAW would call for 14 the production of any cell phone texts that are 15 otherwise responsive to our document request. 16 MR. SHUMAKER: If you can put that 17 into an letter. We're not certain it hasn't 18 already been produced, but we'll certainly look 19 into it. 20 MR. DECHIARA: We'll be happy to put 21 it into the letter. 22</p>
<p style="text-align: right;">Page 389</p> <p>1 Q. Okay. Do you -- do you recall them 2 being in any form other than e-mails? 3 A. No. I'm just -- I'm trying to 4 distinguish whether they were e-mails or whether 5 they were texts. 6 And I -- I think I recall -- I think 7 I recall e-mails. There may have been a voice 8 mail. I'm not sure. 9 But it -- it was just, you know -- 10 it's what I call, you know, sort of a -- a -- a 11 good -- good -- good home training. I mean, you 12 follow-up and say, hey, glad you're interested, 13 hope you consider it, something like that. 14 Q. Okay. Is it your testimony you're 15 not sure whether those exchanges with the Governor 16 before you were EFM were e-mails, voice mails or 17 texts? And when I say "texts" -- 18 A. Yeah. 19 Q. -- I assume you're talking about -- 20 and tell me if -- if I'm mistaken -- 21 A. Right. 22 Q. -- the kind of texts you would send</p>	<p style="text-align: right;">Page 391</p> <p>1 BY MR. DECHIARA: 2 Q. Let me now ask you the same question 3 regarding Treasurer Dillon -- 4 A. Um-hum. 5 Q. -- again, before you were appointed 6 EFM, did you have any written exchanges in the 7 form of cell phone texts, e-mails or hard copy 8 documents with Treasurer Dillon? 9 A. There may have been one. 10 Q. And what -- do you have a specific -- 11 A. -- same -- it was the same, hey, you 12 know, I hope you're interested, please consider it 13 or something like that. 14 I don't recall quite as clearly 15 anything with Treasurer Dillon, but there may have 16 been one. 17 Q. Okay. But not more than one? 18 A. I don't think more than one, no. 19 Q. Okay. And what about -- same 20 question for exchanges with Mr. Baird? 21 A. I think I've seen some of those 22 exchanges during my September 16th, 2013</p>



<p style="text-align: right;">Page 392</p> <p>1 deposition; so yes.</p> <p>2 Q. And what -- what's your recollection</p> <p>3 as you sit here today of what your exchange --</p> <p>4 written exchanges were with Mr. Baird before you</p> <p>5 were EFM?</p> <p>6 A. Kevyn, heard you're not interested --</p> <p>7 just generally speaking -- hope you'll reconsider;</p> <p>8 the e-mail exchange that we went through today;</p> <p>9 things of that -- if you're considering, this is</p> <p>10 what the job would entail; gee, Rich, I'd have to</p> <p>11 take myself out of the firm. I'd be willing to</p> <p>12 work with anyone side by side, but, you know, I</p> <p>13 don't want to leave my firm. Well, this is an</p> <p>14 important undertaking. Okay, I'll consider it;</p> <p>15 public service. Here, we'll propose what the job</p> <p>16 entails. That's fine, whatever it is, it is.</p> <p>17 That's the extent of those exchanges.</p> <p>18 Q. Okay. So the description you just</p> <p>19 gave of your exchanges with Mr. Baird exhausts</p> <p>20 your recollection --</p> <p>21 A. Yeah.</p> <p>22 Q. -- let me just finish the question --</p>	<p style="text-align: right;">Page 394</p> <p>1 your recollection, what -- who were those</p> <p>2 exchanges with? Do you -- do you recall?</p> <p>3 A. I don't recall, but probably someone</p> <p>4 in the Governor's scheduling office or -- or</p> <p>5 communications office. I mean, I didn't -- I</p> <p>6 didn't know who those -- I didn't know who those</p> <p>7 people were at the time --</p> <p>8 Q. Okay.</p> <p>9 A. -- okay? But there was -- it was</p> <p>10 something about, you know, you need to be here on</p> <p>11 this date, and we'll have the rollout, something</p> <p>12 like that.</p> <p>13 Q. Okay. Was there anything more</p> <p>14 substantive than scheduling matters?</p> <p>15 A. No. Nope.</p> <p>16 Q. Okay. Now, I'm going to change the</p> <p>17 question -- series of questions and ask about the</p> <p>18 time period after you were appointed EFM.</p> <p>19 A. Right.</p> <p>20 Q. So let me begin with the Governor.</p> <p>21 A. Okay.</p> <p>22 Q. Did you have any written exchanges,</p>
<p style="text-align: right;">Page 393</p> <p>1 A. I'm sorry.</p> <p>2 Q. -- exhausts your recollection of the</p> <p>3 written exchanges you had with Mr. Baird before</p> <p>4 you were appointed EFM?</p> <p>5 A. Yes. I think you have those</p> <p>6 exchanges.</p> <p>7 Certainly, I've seen several of them.</p> <p>8 Q. Okay. Now, I'm going to ask you the</p> <p>9 same question, but instead of just limiting the</p> <p>10 question to the Governor, Mr. Dillon and</p> <p>11 Mr. Baird, I'm going to expand it --</p> <p>12 A. Um-hum.</p> <p>13 Q. -- to include their assistants or</p> <p>14 their staff or people who work for them.</p> <p>15 Again, did you have any written</p> <p>16 exchanges of any form with any of those people</p> <p>17 before you were appointed EFM that you recall?</p> <p>18 A. I don't recall specifically, but in</p> <p>19 an effort to be responsive, I think there must</p> <p>20 have been probably at least one or two talking</p> <p>21 about the March 13th-14th press conference.</p> <p>22 Q. Okay. And what -- to the best of</p>	<p style="text-align: right;">Page 395</p> <p>1 meaning e-mails, texts or hard copy</p> <p>2 correspondence, with the Governor after you were</p> <p>3 appointed EFM until today?</p> <p>4 A. Yes, I believe so.</p> <p>5 Q. And can you tell me what those</p> <p>6 were -- or what those have been?</p> <p>7 A. Well, generally, the 25th and 26th</p> <p>8 was glad you're on board -- they're</p> <p>9 congratulatory --</p> <p>10 Q. I understand. So the 26th -- 20 --</p> <p>11 A. March --</p> <p>12 Q. -- of what month?</p> <p>13 A. -- of March --</p> <p>14 Q. Okay.</p> <p>15 A. -- after I was actually appointed.</p> <p>16 I think they were more courtesy and</p> <p>17 protocol, congratulatory e-mails.</p> <p>18 After that, there weren't -- after</p> <p>19 the first day or so, there weren't a lot of</p> <p>20 e-mails. And sitting here today, I don't recall</p> <p>21 the last time I got an e-mail or text from the</p> <p>22 Governor.</p>



<p style="text-align: right;">Page 396</p> <p>1 Q. Okay. So my question was not limited 2 to e-mails; it was not limited to the last time 3 you got a text -- 4 A. Okay. 5 Q. -- the question is, other than the 6 congratulate -- congratulatory exchange in -- 7 around March 26th to 27th with the Governor, do 8 you have any recollection of any other exchanges 9 in written form that you've had with the Governor? 10 A. I don't -- I don't have any 11 recollection. I would think that there probably 12 are some, but they weren't very frequent -- it's 13 not like -- the Governor and I meet more than the 14 written exchanges, so it's not like there were a 15 lot of written exchanges or I would have had -- or 16 I would expect there to be a lot. 17 Q. Okay. Well, sitting here today, can 18 you testify as to the substance of any -- let -- 19 let me finish -- 20 A. Yeah. 21 Q. -- please -- 22 A. Um-hum.</p>	<p style="text-align: right;">Page 398</p> <p>1 reach out, and I'd typically respond, thanks, 2 Governor, I enjoyed our discussion, or something 3 along those lines. 4 Q. Okay. Same question for 5 Treasurer Dillon. 6 Since you were appointed EFM through 7 the present, have you had any written exchanges, 8 whether electronic or in hard copy -- 9 A. Yes. 10 Q. -- with Governor Dillon? 11 A. With Treasurer? 12 Q. I'm sorry. Strike that. 13 With Treasurer Dillon. Sorry -- 14 A. Yes. 15 Q. -- I didn't mean to give him a 16 promotion. 17 A. Right. 18 Q. Can you tell me what those were? 19 A. Those were initially the attaboy 20 e-mails. 21 I think, since then, for instance, 22 with regard to contracting of restructuring</p>
<p style="text-align: right;">Page 397</p> <p>1 Q. -- the substance of any written 2 exchange you've had with the Governor since you 3 became EFM apart from the congratulatory exchange 4 you had with him on March 26th or 27th? 5 A. Generally, I would -- I would 6 classify -- there were no substantive exchanges 7 that I recall. They were more in the nature of an 8 attaboy. 9 If there was a -- a press conference, 10 or something along those lines, or a meeting of 11 creditors or -- or -- I'm just saying, for 12 instance, I don't recall anything with 13 specificity. 14 But there's nothing substantive and 15 there were no directive, do this, do this, do 16 this, something like that -- there was nothing 17 like that. It was more like good job yesterday, 18 nice seeing you again, things along those lines. 19 Q. And who would be -- who would be 20 saying that to whom? The Governor would be saying 21 that to you? 22 A. Yeah. The Governor would typically</p>	<p style="text-align: right;">Page 399</p> <p>1 professionals, I generally have to send an e-mail 2 to the Treasurer and/or his staff seeking 3 permission to retain those professionals, and 4 we've done that -- 5 Q. Let me just pause you there. 6 Did one of those exchanges have to do 7 with the retention of Jone- -- the law firm of 8 Jones Day? 9 A. I believe so. 10 Q. And did you -- what was the nature of 11 that exchange? 12 A. That -- that would be a -- a 13 technical -- Treasurer Dillon, attached is the 14 contract of insert restructuring professional. It 15 has been vetted by the City Council or it's been 16 reviewed by my staff. It provides X, Y, Z. Under 17 my contract and statute, I have to seek your 18 approval. Accordingly, I'm requesting your 19 approval of the contract. 20 Q. Okay. So you sought the approval of 21 Treasurer Dillon for the City to retain Jones Day? 22 A. Yes.</p>



<p style="text-align: right;">Page 400</p> <p>1 Q. And he approved it?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Okay.</p> <p>4 I'm sorry. I had interrupted you --</p> <p>5 A. Yeah.</p> <p>6 Q. -- you -- if you could please</p> <p>7 continue with giving your recollection of the</p> <p>8 exchanges you've had with Treasurer Dillon.</p> <p>9 A. Those are the ones that -- that stick</p> <p>10 out in my mind. There -- there may have been --</p> <p>11 let's see. There are the contract approval</p> <p>12 process. There are the attaboys, like, good job,</p> <p>13 Kevyn, that sort of thing. They're</p> <p>14 nonsubstantive.</p> <p>15 There may have been others. None</p> <p>16 stick out in my mind and none were particularly</p> <p>17 substantive. For instance, if there was a group</p> <p>18 or organization that the treasury [verbatim]</p> <p>19 thought could provide a service to the City, for</p> <p>20 instance, benefits enrollment, he might send me an</p> <p>21 e-mail along the lines of this is someone who</p> <p>22 might be able to help you with your benefit</p>	<p style="text-align: right;">Page 402</p> <p>1 I don't technically send them;</p> <p>2 somebody on my staff sends them out. I sign the</p> <p>3 letter, and they -- they e-mail it.</p> <p>4 So I'm going to -- the public</p> <p>5 technical reporting requirements are -- could be</p> <p>6 qualified in your question.</p> <p>7 Q. Yes.</p> <p>8 So let me clarify my question --</p> <p>9 A. Okay.</p> <p>10 Q. -- I'm not limiting it to documents</p> <p>11 that you draft yourself, but documents that are</p> <p>12 prepared for you.</p> <p>13 A. Okay. I'm sure there are a lot of</p> <p>14 communications between my staff and the treasury</p> <p>15 having to do with the reports that we have. And</p> <p>16 when I say "a lot," I don't know how many, but</p> <p>17 I'm -- I'm taking them out of the attaboy, good</p> <p>18 luck questions and putting them in more to the</p> <p>19 substantive questions.</p> <p>20 I think my staff or people at my</p> <p>21 direction, my contractors, may submit cash flow</p> <p>22 projections and cash flows, projections over</p>
<p style="text-align: right;">Page 401</p> <p>1 outreach. You may want to talk with them.</p> <p>2 Similarly, if there was someone who</p> <p>3 had reached out to the State or reached out to the</p> <p>4 treasury, this is someone who asked that I put you</p> <p>5 in touch with them, things of that nature.</p> <p>6 Those were probably more regular.</p> <p>7 Q. Did you have any written exchanges</p> <p>8 with the Treasurer about the City's unfunded</p> <p>9 pension liability?</p> <p>10 A. Well, the reason I'm -- I'm</p> <p>11 hesitating -- I'm -- I think we had regular</p> <p>12 reports to the -- okay. I'm obligated to submit</p> <p>13 regular -- 30-day, 180-day reports, which I do,</p> <p>14 and those are published in public. So I'm going</p> <p>15 to --</p> <p>16 Q. And who do you submit those to?</p> <p>17 A. To -- to the Treasurer Dillon and, in</p> <p>18 some cases, the Governor.</p> <p>19 So my -- my reports that I'm required</p> <p>20 to submit, you know, I -- the staff submits them,</p> <p>21 but I'm going to include them in an effort to be</p> <p>22 responsive in your question.</p>	<p style="text-align: right;">Page 403</p> <p>1 actuals, things like that, not</p> <p>2 necessarily directly -- I'm trying not to be</p> <p>3 technical --</p> <p>4 Q. Okay.</p> <p>5 A. -- not necessarily to</p> <p>6 Treasurer Dillon, but to his staff as well.</p> <p>7 Q. Okay. So let me --</p> <p>8 A. Okay.</p> <p>9 Q. -- I -- I appreciate your -- your --</p> <p>10 A. Um-hum.</p> <p>11 Q. -- your efforts to respond.</p> <p>12 Let me --</p> <p>13 A. Okay.</p> <p>14 Q. -- see if I can limit my question</p> <p>15 now.</p> <p>16 A. Um-hum.</p> <p>17 Q. So I'm not interested in</p> <p>18 correspondence that's official correspondence --</p> <p>19 A. Okay.</p> <p>20 Q. -- that's required -- you're required</p> <p>21 by your official duties to make, but so setting</p> <p>22 apart, you know, officially required</p>

<p style="text-align: right;">Page 404</p> <p>1 correspondence --</p> <p>2 A. Right.</p> <p>3 Q. -- so let me -- let me limit my</p> <p>4 question in that regard.</p> <p>5 So --</p> <p>6 A. Okay.</p> <p>7 Q. -- so let me go back.</p> <p>8 A. Okay.</p> <p>9 Q. Do you recall any exchange -- written</p> <p>10 exchanges with Treasurer Dillon regarding the</p> <p>11 City's unfunded -- unfunded pension liabilities?</p> <p>12 A. Outside of the official</p> <p>13 correspondence?</p> <p>14 Q. Right.</p> <p>15 A. No, I don't recall any specific</p> <p>16 correspondence between me and Treasurer Dillon</p> <p>17 regarding unfunded pension liabilities, no.</p> <p>18 Q. Okay. Do you recall ever seeing an</p> <p>19 e-mail by Treasurer Dillon in the early part of</p> <p>20 July 2013 where he says he speak -- he spoke to</p> <p>21 the City consultants and he didn't realize how</p> <p>22 significant the unfunded pension liabilities were?</p>	<p style="text-align: right;">Page 406</p> <p>1 congratulatory protocol attaboys, specifically</p> <p>2 with related to pension liabilities, I don't have</p> <p>3 any recollection of those exchanges. There might</p> <p>4 be, I just -- we did not have specific exchanges</p> <p>5 focused just solely on pension liabilities, and I</p> <p>6 don't recall any.</p> <p>7 Q. Okay. So now let me ask about</p> <p>8 Mr. Baird.</p> <p>9 A. Yes.</p> <p>10 Q. Subsequent to your being appointed to</p> <p>11 EFM --</p> <p>12 A. Right.</p> <p>13 Q. -- through to the present, have you</p> <p>14 had any written exchanges, electronic or hard</p> <p>15 copy, with Mr. Baird?</p> <p>16 A. Yes.</p> <p>17 Q. And can you tell me what those have</p> <p>18 been?</p> <p>19 A. Those are generally about staffing</p> <p>20 decisions; how's it going with your staff; how's</p> <p>21 it's going with restructuring City operations;</p> <p>22 good job; generally staffing.</p>
<p style="text-align: right;">Page 405</p> <p>1 Do -- do you have any recollection of</p> <p>2 ever seeing an e-mail like that?</p> <p>3 A. Was I copied on it?</p> <p>4 Q. I -- I -- I'm just asking if you</p> <p>5 have --</p> <p>6 A. Do I have any recollection?</p> <p>7 Q. -- any recollection of an e-mail like</p> <p>8 that.</p> <p>9 A. I have no recollection. If you have</p> <p>10 a writing, I'd be happy to look at it, but I</p> <p>11 don't.</p> <p>12 Q. Okay. Other than what you've</p> <p>13 testified so far in response to my questions about</p> <p>14 written exchanges with Treasurer Dillon, do you</p> <p>15 have any recollection of any other written</p> <p>16 exchanges with Treasurer Dillon?</p> <p>17 A. No. We -- we have a -- we have --</p> <p>18 you know, we have reporting requirements; we try</p> <p>19 to make those. We have approval requirements; we</p> <p>20 try to make those.</p> <p>21 If you're looking for, like,</p> <p>22 exchanges between us that are besides the</p>	<p style="text-align: right;">Page 407</p> <p>1 I don't think I've had any exchanges</p> <p>2 with Mr. Baird about pension liabilities.</p> <p>3 Q. Okay. Have you had any exchanges</p> <p>4 with Mr. Baird about any provisions of the</p> <p>5 Michigan Constitution?</p> <p>6 A. No, I don't recall. No, I don't</p> <p>7 think I've had any of those exchanges with</p> <p>8 Mr. Baird.</p> <p>9 Q. Okay. Now, let me ask you whether</p> <p>10 you've had any written exchanges with any State</p> <p>11 officials or staff of the Governor or the</p> <p>12 Treasurer or Mr. Baird after you were EFM apart</p> <p>13 from any official documents -- any correspondence</p> <p>14 that was required by law that touched on, in any</p> <p>15 way, the City's unfunded pension liabilities?</p> <p>16 A. Outside of attorney-client</p> <p>17 communications?</p> <p>18 Q. Well, I'm going to ask you about any</p> <p>19 of them. If you -- if you're going to assert or</p> <p>20 your attorney is going to assert a privilege,</p> <p>21 that's your -- your option to do so, but I'm just</p> <p>22 going to ask the question.</p>



<p style="text-align: right;">Page 408</p> <p>1 A. Okay. I'll -- I'll answer two 2 ways -- well, three ways. 3 You said with anyone else in -- in 4 Government? 5 Q. In the State Government, right. 6 A. In the State Government. 7 One I may have had -- I certainly 8 recall a call, but I don't recall -- I recall a 9 courtesy call from the Attorney General that he 10 was going to be taking a stand on the 11 constitutionality of pensions. I don't recall a 12 writing. 13 So I'm -- I'm trying to be responsive 14 and going a little broad. You didn't ask about 15 calls, but I'll give it to you. 16 I am confident there are likely 17 communications either between me and my staff and 18 the Governor's office legal team not necessarily 19 about pension obligations, but regarding a 20 potential plan. I think those are privileged. 21 Not a lot. 22 Q. Okay. So -- I'm sorry --</p>	<p style="text-align: right;">Page 410</p> <p>1 Q. Okay. So he made a public filing. 2 And when in time in relation to 3 the -- when he made the filing did he call you? 4 A. I'm not sure it was a filing. I'm 5 just saying there was a -- I recall there was a 6 position he was going to take publicly, and he 7 made a courtesy call to me and left a message. 8 Q. Okay. And you don't recall when he 9 took that position publicly? 10 A. No, I don't. 11 Q. Do you remember what the position 12 was? 13 A. Whatever's been reported in the 14 papers as far as his position. 15 Q. Well, I'm asking you do you -- do you 16 remember what his position was? 17 A. I -- I remember his position was that 18 he believed that the Michigan State Constitution 19 protected pensions. 20 Q. Okay. And did he call you or did you 21 call him? 22 A. No. I believe he called me and left</p>
<p style="text-align: right;">Page 409</p> <p>1 A. Okay. 2 Q. -- anything else come to mind? 3 A. And -- and just -- just -- here 4 again, I'm -- I'm -- you know, I'll lump them in 5 in the protocol calls -- not calls, protocol memos 6 from the Judge's scheduler, can you do this 7 meeting here with the Governor, can you -- just 8 generally protocol discussions like that. 9 Q. Okay. Let me go back to the -- the 10 telephone call you had with the Attorney General. 11 A. Right. 12 Q. When was that? 13 A. I think it was either the -- I think 14 it was the day before he made his public 15 announcement. I don't recall a specific day. 16 Q. Do you know what month it was in? 17 A. I -- I -- I -- I didn't -- it -- it's 18 in the public record. I just don't recall which 19 one. It wasn't March. 20 Q. It was after the bankruptcy filing? 21 A. No. It may have been before. I just 22 don't recall the date.</p>	<p style="text-align: right;">Page 411</p> <p>1 a message. 2 Q. And did you speak to him at some 3 point? 4 A. Not at that -- I think I called him 5 back that afternoon and said thank you, and that 6 was the extent of our conversation -- or that 7 evening, and that was the extent of our 8 conversation. 9 Q. So other than you're saying thank you 10 for the message, there's no other exchange between 11 you and the Attorney General? 12 A. No. It was of the nature of thank 13 you, Attorney General, I understand that you're 14 going to be taking this position. Thank you for 15 the courtesy call. 16 Q. Okay. Did you discuss the substance 17 of his position? 18 A. No, we did not. 19 Q. Okay. Have you ever discussed the 20 substance of his position with him? 21 A. Yes. 22 Q. When did you do that?</p>



<p style="text-align: right;">Page 412</p> <p>1 A. I think in a meeting with my attorney 2 and someone from his office. 3 Q. Okay. And when was that? 4 A. I don't recall the day. I don't -- I 5 don't recall the -- it was after March. It may 6 have been prior to or after the bankruptcy filing. 7 I don't recall. 8 Q. Okay. And who was at the meeting? 9 A. I was at the meeting; 10 Attorney General Schuette was at the meeting; an 11 attorney from his office, Matt, was there -- I 12 forget his last name -- and my attorney, 13 David Heiman, was on the phone. 14 Q. Okay. And who -- how did the meeting 15 come about? Did someone ask to have the meeting? 16 A. I think -- yes, I think the Attorney 17 General's Office contacted my office and asked to 18 schedule a meeting. 19 Q. Did the person who asked to schedule 20 the meeting explain why they -- the Attorney 21 General wanted a meeting? 22 A. No.</p>	<p style="text-align: right;">Page 414</p> <p>1 when the tape runs out? 2 THE VIDEOGRAPHER: Two minutes. 3 MR. DECHIARA: Okay. 4 Why don't -- why don't we take a -- 5 maybe this is a good time -- do you have to -- how 6 long does it take to change the -- change -- 7 THE VIDEOGRAPHER: I can go off the 8 record now and change. 9 MR. DECHIARA: Okay. 10 MR. ULLMAN: Why don't we take a 11 break and -- 12 MR. DECHIARA: Why we don't take a 13 break now? Is that -- 14 THE WITNESS: Sure. 15 MR. DECHIARA: -- is that good? He 16 has to change the tape. 17 THE VIDEOGRAPHER: Going off the 18 record at 12:42. This marks the end of Tape 19 Number 1. 20 - - - 21 (Whereupon, a brief recess was taken 22 from 12:42 p.m. to 1:06 p.m.)</p>
<p style="text-align: right;">Page 413</p> <p>1 Q. Did you have an understanding of why 2 he wanted a meeting? 3 A. I don't think so. I think -- you 4 know -- no, I don't think so until we got to the 5 meeting. It was in Lansing. 6 Q. Okay. Do you recall the meeting? 7 A. Yes. 8 Q. What was said in the meeting? 9 A. Is that privileged? 10 MR. SHUMAKER: To -- to the extent 11 that there was a common interest between what the 12 Attorney General and his counsel was relating with 13 you and Mr. Heiman, I'm going to ask you -- 14 instruct you not to answer. 15 If it related to issues where there 16 was no common interest, you can testify to that. 17 MR. DECHIARA: I -- I just -- can we 18 just pause? Are we on -- is there -- are you out 19 of tape or what's -- 20 THE VIDEOGRAPHER: I've got 21 five minutes on the tape. 22 MR. DECHIARA: Okay. You'll tell me</p>	<p style="text-align: right;">Page 415</p> <p>1 - - - 2 THE VIDEOGRAPHER: Going back on the 3 record at 1306. This marks the beginning of 4 Tape Number 2. 5 MR. DECHAIRA: Okay. 6 BY MR. DECHAIRA: 7 Q. Mr. Orr, before we broke, I was 8 asking you about a meeting you had with the 9 Michigan Attorney General. 10 And my question was, what was said at 11 that meeting? 12 A. Yes. 13 With Attorney General Schuette, I 14 don't recall the exact date; but, generally 15 speaking, the Attorney General -- at the meeting, 16 as I said, was Mr. Heiman on the phone, the 17 Attorney General and an attorney from his office, 18 Matt, whose last name escapes me right now. And 19 generally what was said, the Attorney General 20 wanted to express why he felt duty-bound to take a 21 position that the Michigan State Constitution 22 protected vested pension obligations.</p>

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1 Q. -- you what was said --

2 A. Okay.

3 Q. -- I'm just asking you the identity

4 of the attorneys who were telling you that what

5 the Attorney General was telling you was not

6 correct.

7 And you've identified Jones Day.

8 You've identified your local counsel.

9 I'm just asking you, was there anyone

10 else giving you advice on that matter?

11 A. I wouldn't call it "advice." I mean,

12 I've -- you know, at various meetings and events,

13 other attorneys will come up to me as recently as

14 yesterday and said that the position that we're

15 asserting is the correct one.

16 Q. Who said that to you yesterday?

17 A. An attorney from -- I forget his law

18 firm; but, you know, at various places, different

19 people come up to me and offer their opinions as

20 to what the position should be --

21 Q. Let me --

22 A. -- I wouldn't call that "advice,"

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1 though; it's just, you know, public commentary.
2 Q. Okay. So the -- the lawyers who were
3 giving you -- giving you advice in their capacity
4 as attorneys for the City or as attorneys for the
5 emergency manager were the Jones Day law firm and
6 a local counsel?

7 A. Yes.

8 Q. Okay. Let me now refer you to the
9 June 14th, 2013 meeting with creditors.
10 Do you recall that meeting?

11 A. Yes.

12 Q. Okay. Do you recall being asked a
13 question at that meeting about Article IX,
14 Section 24 of the Michigan Constitution?

15 A. Do I recall?

16 There -- there -- I think there was a
17 question. I don't know if -- I don't think that
18 meeting was recorded. So I don't know if there's
19 something to refresh my recollection. But I don't
20 specifically recall. I think there probably was a
21 question. I just don't recall it with
22 specificity.

<p style="text-align: right;">Page 420</p> <p>1 Q. Okay. And do you recall if there 2 were any questions about Detroit's pensions? 3 A. I believe there were. 4 Q. Okay. Do you -- in -- do you recall 5 responding to any of those questions? 6 A. I don't recall specifically what I 7 said, but I believe I probably did. 8 Q. Okay. Do you recall -- go ahead. 9 I'm sorry. 10 A. No, I'll answer your question. 11 I -- I think I did recall to a 12 question about pensions, and I think I mentioned 13 that in other cases in which I've been involved, 14 that Federal preemption dealt with states' 15 rights -- states' protections. I think there was 16 that discussion, excuse me, on June 14th. 17 Q. Do you recall making a reference to 18 legislative -- legislative relief? 19 A. Yeah. Yes, I do. 20 Q. Can you tell me what you said in that 21 connection? 22 A. I think it was a pretty short offhand</p>	<p style="text-align: right;">Page 422</p> <p>1 petition was originally dated July 19th and it 2 said July 19th, 2013 in print on it, and that it 3 was then changed by hand to say July 18th? 4 MR. SHUMAKER: Object to the form. 5 THE WITNESS: I -- I don't recall 6 that then. But I think we talked about this at my 7 September 16th, 2013 deposition. I think someone 8 asked me that question. 9 So I -- I -- I recall it from that 10 deposition. 11 BY MR. DECHAIRA: 12 Q. Well, do you have an independent 13 recollection -- 14 A. I -- I don't -- 15 Q. Let me just finish for the clarity of 16 the record. 17 Do you have an independent 18 recollection of the bankruptcy petition saying 19 July 19th in print on it and then someone changing 20 it by hand to say the 18th? 21 Do you have an independent 22 recollection of that?</p>
<p style="text-align: right;">Page 421</p> <p>1 comment, that I said, well, it could be either 2 Federal preemption, or it might require some 3 legislative relief. 4 Q. And what did you mean by "legislative 5 relief"? 6 A. I didn't really mean anything with 7 specificity other than to say there might be an 8 opportunity to seek some sort of legislative 9 relief. I didn't really have a plan or anything 10 with specifics in mind at that time. 11 Q. Let me now refer you to the 12 bankruptcy petition -- 13 A. Yes. 14 Q. -- that was filed on behalf of the 15 City. 16 Do you recall that document? 17 A. Yes. 18 MR. SHUMAKER: You're getting pretty 19 far afield here, Counsel. I hope you can tie it 20 in with the State officials. 21 BY MR. DECHAIRA: 22 Q. Did -- do you recall that that</p>	<p style="text-align: right;">Page 423</p> <p>1 A. It's a little fuzzy, but I think in 2 signing it, I'm the one who changed it. 3 Q. You changed it to the 18th? 4 A. Yeah. Whatever day I signed it, I 5 think I -- I routinely will get documents that are 6 dated with different dates, and I'll change them, 7 interlineate on them the correct date. 8 Q. Okay. Let me just -- I had been 9 asking you a line of questions about written 10 communications you were having with State 11 officials. 12 A. Yes. 13 Q. Let me go back and ask you, do you 14 recall written communications with staff or 15 other -- officials other than the Governor, the 16 Treasurer or Mr. Baird, after you were appointed 17 as EFM, that touched on or concerned in any way 18 the issue of Detroit City pensions? 19 A. No, not really. 20 No. 21 Q. Prior to your being appointed as EFM, 22 did you have any oral exchanges, spoken exchanges,</p>



<p style="text-align: right;">Page 424</p> <p>1 whether by telephone or in person, with the 2 Governor? 3 A. Yeah, I think I testified this 4 morning that he may have called me prior to my 5 actual appointment to say we hope you consider it 6 and would like you to come on board, things along 7 those lines. 8 Q. Was it -- did it -- was that just one 9 exchange you had with him? 10 A. No, I think I said there may have 11 been one or two along those lines. 12 Q. Were there any exchanges other than 13 where the exchange was limited to, you know, 14 welcome on board? 15 A. There -- there were no substantive 16 exchanges. Mostly exchanges I -- I had -- 17 conversations I had with the Governor were 18 pleasantries. 19 Q. Okay. 20 Now let me ask the same question, but 21 I'm going to change the time frame from between 22 the time you were appointed EFM until the Governor</p>	<p style="text-align: right;">Page 426</p> <p>1 with the Governor between the time you were 2 appointed as EFM until the Governor authorized the 3 bankruptcy filing where it was just you and the 4 Governor speaking with no one else present? 5 A. Yes. 6 Q. And how many times did that occur? 7 A. More than a couple. Sometimes after 8 the weekly meetings, if they're in person, the 9 Governor and I -- the Governor will take me aside 10 into his office and we'll have separate one-on-one 11 meetings. 12 Q. And do you have a specific memory of 13 any of those meetings? 14 A. Yeah, those meetings are typically 15 just an opportunity for the Governor -- they -- 16 they comprise a combination of -- of 17 personal -- you know, personal inquiries: How's 18 your family doing; do you need anything; how are 19 you holding up; how's your staff; do you need any 20 help in any way fashion, things along those lines. 21 They're not -- they're not really 22 substantive follow-ups of the actual meetings that</p>
<p style="text-align: right;">Page 425</p> <p>1 authorized the bankruptcy filing. 2 So -- 3 A. Um-hum. 4 Q. -- in that period, did you have any 5 spoken exchanges with the Governor? 6 A. Yes. 7 Q. And do you know how many you had? 8 A. Well, I've said we've -- we've had 9 regular meetings with the Governor. My contract 10 requires me to keep the Governor and the Treasurer 11 apprised as to what we're doing. We have those 12 meetings almost weekly. There may have been a 13 week here or there that we missed, but we have 14 regular weekly meetings. 15 Q. And those are face-to-face meetings 16 with -- with -- 17 A. They're typically face-to-face. 18 Occasionally, they're by phone. 19 Q. Okay. Have you had any meetings 20 during that period -- actually, I'm not even going 21 to call them meetings. 22 Have you had any spoken exchanges</p>	<p style="text-align: right;">Page 427</p> <p>1 we've had just prior to those meetings. 2 Q. Have you ever, in those one-on-one 3 meetings with the Governor, spoken about the issue 4 of Detroit's unfunded pension liability? 5 A. Not that I recall, no. 6 Q. Did you ever discuss with the 7 Governor, in those one-on-one meetings, anything 8 having to do with restrictions or prohibitions in 9 the Michigan Constitution? 10 A. No. 11 Q. Did you ever speak to him about the 12 Attorney General's position on the issue of 13 pensions? 14 A. I -- I may have. 15 Q. And what was said? 16 A. The substance of those conversations, 17 the one-on-one meetings, was that, you know, I 18 understand the Attorney General believes he has to 19 take a position, obviously -- 20 Q. Who is speaking when you're saying 21 that? 22 A. Oh, me. I'm -- the Governor and I</p>



<p style="text-align: right;">Page 428</p> <p>1 are speaking, just the two of us in the room. I</p> <p>2 think it was something along the lines, I</p> <p>3 understand he's taken a position; we disagree with</p> <p>4 it; ultimately, this will be sorted out in court.</p> <p>5 Q. And that's -- that's what you said?</p> <p>6 A. Yeah, pretty much what I said.</p> <p>7 Q. Okay. And did the Governor respond,</p> <p>8 or did he say anything?</p> <p>9 A. No; the Governor responded, yeah, I</p> <p>10 understand you have to take the position that you</p> <p>11 have to take in your case.</p> <p>12 Q. Has the Governor ever expressed to</p> <p>13 you, in a one-on-one meeting, his view of the</p> <p>14 Attorney General's position?</p> <p>15 A. No.</p> <p>16 Q. So it was just a -- when you and the</p> <p>17 Governor had a meeting where the issue of the</p> <p>18 Attorney General's position came up, it was just a</p> <p>19 one-way communication by you saying what it is you</p> <p>20 just said?</p> <p>21 A. Yeah, as I said, these are not</p> <p>22 substantive meetings. These are more sort of what</p>	<p style="text-align: right;">Page 430</p> <p>1 same time frame between when you were appointed as</p> <p>2 EFM until the Governor authorized the bankruptcy</p> <p>3 filing.</p> <p>4 Let me now refer to meetings you've</p> <p>5 had with the Governor where there were other</p> <p>6 people present.</p> <p>7 A. Yes.</p> <p>8 Q. Were there any discussions in any of</p> <p>9 those meetings about Detroit's pension</p> <p>10 liabilities?</p> <p>11 A. Now, these are where attorneys are</p> <p>12 present or covered by the common interest</p> <p>13 privilege?</p> <p>14 Q. Well, I'm just going to ask you about</p> <p>15 what was said in those meetings, and if you want</p> <p>16 to refuse to answer or if your attorney wants to</p> <p>17 instruct you -- you to refuse to answer, that's --</p> <p>18 A. Okay.</p> <p>19 Q. -- a decision you have to make.</p> <p>20 MR. SHUMAKER: You -- you can -- you</p> <p>21 can answer that question.</p> <p>22 THE WITNESS: Yeah. There were</p>
<p style="text-align: right;">Page 429</p> <p>1 I call the personal meetings, where the Governor</p> <p>2 just takes time out of his schedule to ask me how</p> <p>3 things are going; how am I holding up; how my</p> <p>4 staff is; and, you know, I -- I would occasionally</p> <p>5 say, yeah, you know, I met -- for instance, the</p> <p>6 meeting I had with the Attorney General, met with</p> <p>7 the Attorney General. He expressed his interests</p> <p>8 in the position he has to take. We obviously</p> <p>9 disagree with it.</p> <p>10 The Governor would take no position</p> <p>11 on that. He would say, okay, I understand, you</p> <p>12 know, you have to do what you think is appropriate</p> <p>13 on behalf of the City.</p> <p>14 That was the extent of the</p> <p>15 conversations.</p> <p>16 Q. So am I correct that the Governor</p> <p>17 never actually told you that the Attorney</p> <p>18 General's position was wrong?</p> <p>19 A. I -- yeah, I don't believe the</p> <p>20 Governor ever opined as to the Attorney General's</p> <p>21 position.</p> <p>22 Q. Let me now speak beyond the -- in the</p>	<p style="text-align: right;">Page 431</p> <p>1 meetings. As I said before, we have, typically,</p> <p>2 weekly meetings. Occasionally, we've missed a</p> <p>3 week or two, but typically, weekly.</p> <p>4 BY MR. DECHAIRA:</p> <p>5 Q. Okay. And in any of those meetings,</p> <p>6 were Detroit's pension liabilities discussed?</p> <p>7 MR. SHUMAKER: You can answer that.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. DECHAIRA:</p> <p>10 Q. And what was said?</p> <p>11 MR. SHUMAKER: I'm -- I'm going to</p> <p>12 object here and caution the witness to the extent</p> <p>13 that any of the communications called for by the</p> <p>14 question ask for information relating to your</p> <p>15 seeking or the provision of legal advice, I</p> <p>16 instruct you not to answer. Outside of that, you</p> <p>17 can.</p> <p>18 THE WITNESS: Those -- I think</p> <p>19 those -- those conversations are covered by the</p> <p>20 attorney-client privilege and the common interest</p> <p>21 privilege.</p> <p>22 BY MR. DECHAIRA:</p>



<p style="text-align: right;">Page 432</p> <p>1 Q. Okay. So just so the record's clear, 2 Mr. Orr, you're declining to respond to the 3 question, what was said in those meetings 4 regarding Detroit's pension liabilities? 5 A. Yes, I -- I think, without waiving 6 the privilege -- I want to be very careful here, 7 because I have both the attorney-client privilege 8 and common interest agreement and I don't want to 9 abridge either of those; but without waiving, 10 there were discussions and those discussions 11 probably concerned our perception of what -- what 12 the issues that have been talked about in the 13 public domain concerned regarding vested pension 14 rights. 15 Q. Did the Governor ever say to you 16 whether in a one-on-one -- let me start with a 17 one-on-one meeting. 18 Did the Governor ever say to you in a 19 one-on-one meeting that it was his view that 20 Detroit's pension liability -- strike that -- that 21 Detroit's accrued pension liabilities had to be 22 cut?</p>	<p style="text-align: right;">Page 434</p> <p>1 BY MR. DECHAIRA: 2 Q. Not while there's a question pending. 3 A. Okay. 4 Q. Your attorney is free to -- he's 5 already given you guidance on the record. 6 A. I'm -- I'm trying to be responsive to 7 you. 8 I think those discussions are covered 9 by the attorney-client privilege. 10 Q. Okay. So just to be clear, you're -- 11 you're declining to answer my question? 12 A. Without further guidance, I think I 13 have to. 14 Q. Okay. 15 Let me now change the time frame to 16 after the Governor authorized the bankruptcy 17 filing. 18 Did you have any one-on-one spoken 19 exchanges with the Governor -- or have you had? 20 A. Yes, I believe so. 21 Q. And one or more than one? 22 A. Maybe more than one.</p>
<p style="text-align: right;">Page 433</p> <p>1 Did the Governor ever say that to 2 you? 3 A. No. 4 Q. Okay. And did he ever say that to 5 you in any meeting where there were other people 6 present? 7 MR. SHUMAKER: Again, I'm going to 8 caution the witness to the extent that attorneys 9 were at such meetings and there were -- you were 10 seeking legal advice or legal advice was being 11 given in connection with the Governor's comments, 12 I would instruct you not to answer. 13 If that is not the case, you are free 14 to answer. 15 THE WITNESS: I want to be 16 responsive, but I don't want to waive the 17 privilege. 18 Those discussions were always held in 19 the presence of attorneys generally in discussion 20 of what the rights and positions would be in the 21 case. I can say this, I think -- can I just 22 consult my attorney briefly?</p>	<p style="text-align: right;">Page 435</p> <p>1 Q. And what was the context for those? 2 A. Here again, the same nature of the 3 discussions. They were more general check-in: 4 How's things going; how's staff going; how's City 5 operations going; new chief seems to be doing very 6 well, things along those natures. 7 Q. In -- in any of those one-on-one 8 meetings you've had with the Governor since he 9 authorized the bankruptcy filing, did 10 the Governor -- has the Governor ever expressed 11 the view to you that Detroit's accrued pension 12 liabilities should be cut? 13 A. No. 14 The Governor's never expressed the 15 view to me in any of those meetings that Detroit 16 pension liabilities need to be cut either before 17 or after the filing. 18 Q. Okay. And has he ever expressed a 19 view to you regarding whether he agrees or doesn't 20 agree with the position that was publicly taken by 21 the Attorney General that you testified about 22 earlier?</p>



<p style="text-align: right;">Page 436</p> <p>1 A. No, I don't recall him ever doing 2 that. 3 Q. Did you ever, in any one-on-one 4 conversation with the Governor, speak about any 5 prohibitions or restrictions in the Michigan 6 Constitution? 7 A. No, I don't recall us speaking about 8 that. 9 Q. Okay. Now -- now I'm going to ask 10 you about Treasurer Dillon -- 11 A. Yes. 12 Q. -- I'm going to ask you another -- 13 the same line of questions -- questions about 14 spoken exchanges -- 15 A. Um-hum. 16 Q. -- the time frame is now between -- 17 well, let's say before you were appointed EFM. 18 Did you have any spoken exchanges 19 with -- with the Treasurer? 20 A. Yes. 21 Q. And can you tell me what those were? 22 A. Those were more in the nature of,</p>	<p style="text-align: right;">Page 438</p> <p>1 bankruptcy filing, did you have any spoken 2 exchanges with the Treasurer? 3 A. Yes. 4 Q. And what was the context for those? 5 A. Those discussions were, here again as 6 I said before, generally around retention of 7 professionals, cash flow projections, actuals over 8 projected, potential help that we could get from 9 contractors, sending out the RFP for solid waste, 10 standing up the Public Lighting Authority, 11 standing up the Detroit Land Bank Authority in 12 conjunction with MSHDA, things of those nature. 13 Q. Were these exchanges that you had in 14 the context of meetings with other people present? 15 A. Some of them were, yes. 16 Q. Were any of them one-on-one? 17 A. The Treasurer and I would -- would 18 sometimes -- we -- our meetings were -- the 19 Governor and I would try to have one-on-one 20 meetings after our Detroit team meetings. The 21 Treasurer and I would have one-on-one meetings in 22 a much more irregular ad-hoc basis, if you will.</p>
<p style="text-align: right;">Page 437</p> <p>1 here again, pleasantries; enjoy you considering 2 being a candidate; I had early on hoped and 3 encouraged you to do so; thank you for doing so, 4 along those lines. 5 Q. Did the -- did the Treasurer in any 6 of those spoken exchanges you had with him ever 7 express any views about the economic distress that 8 was facing the City of Detroit? 9 A. Oh, I think he -- I think we may have 10 discussed the -- yes -- yeah, I think we probably 11 discussed the fact that Detroit was under a 12 consent agreement, things of that nature, but it 13 was very high level; it wasn't with any 14 specificity. 15 Q. Well, did you ever speak to him 16 during that time frame about the burden of accrued 17 pension liabilities that was going on in the City? 18 A. Yeah -- no, not that I recall. There 19 were never any discussions in -- in that level of 20 detail. 21 Q. In the time frame after you were 22 appointed EFM, but before the State authorized the</p>	<p style="text-align: right;">Page 439</p> <p>1 If he was in the office building, in the Cadillac 2 office building, at the same time, he might stop 3 by my office. But there was no regular -- 4 regularly set meeting between me and the 5 Treasurer. 6 Q. Okay. Do you -- do you recall those 7 one-on-ones that you had with the Treasurer on 8 those occasions? 9 A. I recall some of them, yes. 10 Q. Okay. And in those, did you ever 11 speak to him about Detroit's accrued pension 12 liability? 13 A. Not specifically. We may have talked 14 about the -- what I call the "balance sheet 15 issues," the amount of debt that the City had, 16 including pension funds, OPEB and GO bond debt; we 17 may have talked about the -- here again, actuals 18 over projections, things -- financial 19 transactions, yes. 20 Q. Did he ever express the view to you 21 in those one-on-one meetings that Detroit's 22 accrued pension liabilities should be -- could be</p>



<p style="text-align: right;">Page 440</p> <p>1 or should be reduced?</p> <p>2 A. I don't recall any specific</p> <p>3 conversations about what should happen with</p> <p>4 Detroit pension liabilities.</p> <p>5 Q. Do you remember the Treasurer talking</p> <p>6 about that, whether specifically or generally or</p> <p>7 in any other way, about that subject?</p> <p>8 A. Not in the one-on-one meetings.</p> <p>9 Q. Did he talk about that in meetings</p> <p>10 where there were other people present?</p> <p>11 A. Yes. The Treasurer attended the</p> <p>12 Detroit team meetings that we had weekly with the</p> <p>13 Governor.</p> <p>14 Q. And did he, at any of those meetings,</p> <p>15 express the view that -- did he -- strike that.</p> <p>16 Did he, at those meetings, say</p> <p>17 anything about whether Detroit's accrued pension</p> <p>18 liabilities should be reduced?</p> <p>19 MR. SHUMAKER: Again, I'm going to</p> <p>20 caution the witness to the extent that any of</p> <p>21 these communications occurred when counsel was</p> <p>22 present in connection with the provision or the</p>	<p style="text-align: right;">Page 442</p> <p>1 BY MR. DECHAIRA:</p> <p>2 Q. Okay. Just to be clear. For -- for</p> <p>3 the reasons you just expressed, you're not going</p> <p>4 to answer the question?</p> <p>5 A. Yes.</p> <p>6 Q. Yes, you're not going to answer?</p> <p>7 A. Yes, I'm not going to answer the</p> <p>8 question.</p> <p>9 Q. Did the Governor -- did the Treasurer</p> <p>10 in any way -- let me ask you about one-on-one.</p> <p>11 In any one-on-one meeting you've ever</p> <p>12 had with him, did he ever express a view about</p> <p>13 whether the Attorney General's position, that you</p> <p>14 testified about earlier, was correct or not?</p> <p>15 A. No.</p> <p>16 Q. Okay. And if I asked you whether he</p> <p>17 ever expressed an opinion on that topic in -- in</p> <p>18 one of the Detroit team meetings, would you</p> <p>19 decline to answer the question on the grounds that</p> <p>20 you just declined to answer my prior question?</p> <p>21 MR. SHUMAKER: I would give the</p> <p>22 witness the same admonition.</p>
<p style="text-align: right;">Page 441</p> <p>1 seeking of legal advice, I will instruct him not</p> <p>2 to answer.</p> <p>3 If that's not the case or there's</p> <p>4 some nonlegal component to it, you can answer.</p> <p>5 THE WITNESS: Okay. Let me -- let me</p> <p>6 try to respond this way. Any of the Detroit team</p> <p>7 meetings with the Governor would have counsel</p> <p>8 present, oftentimes several layers of counsel; in</p> <p>9 fact, I think there were meetings where either my</p> <p>10 counsel was on the phone or counsel on behalf of</p> <p>11 the Governor and his office on the phone. There</p> <p>12 were no team meetings where counsel was not</p> <p>13 present.</p> <p>14 In any of those discussions, those</p> <p>15 discussions would implicate attorney-client</p> <p>16 communications because we would be seeking legal</p> <p>17 advice either from my counsel or from State</p> <p>18 counsel or from both. So I'm going to be very</p> <p>19 careful with those discussions where the</p> <p>20 Treasurer, the Governor and counsel were present.</p> <p>21 So I -- I -- I can't answer about</p> <p>22 those discussions.</p>	<p style="text-align: right;">Page 443</p> <p>1 THE WITNESS: Yes, I would decline to</p> <p>2 answer your question on the grounds it's protected</p> <p>3 by the attorney-client privilege and joint --</p> <p>4 and/or joint interest privilege.</p> <p>5 BY MR. DECHAIRA:</p> <p>6 Q. Okay. Let me now ask you about</p> <p>7 Mr. Baird.</p> <p>8 A. Yes.</p> <p>9 Q. Prior to your being appointed EFM,</p> <p>10 did you have any spoken exchanges with Mr. Baird?</p> <p>11 A. Yes.</p> <p>12 Q. And can you tell me what those were?</p> <p>13 A. Yes, I think as I testified on</p> <p>14 September 16th and, again, earlier today, and as</p> <p>15 has been represented in the e-mail chains that</p> <p>16 were gone over on September 16th and the ones that</p> <p>17 were discussed this day, they were about my</p> <p>18 potentially becoming the emergency financial</p> <p>19 manager, subsequently emergency manager for the</p> <p>20 City of Detroit.</p> <p>21 Q. Did you have any exchanges with him</p> <p>22 before you -- spoken exchanges with him before you</p>



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1 Q. So -- so am I correct that you had
2 multiple one-on-one exchanges with the Governor
3 about the question about when the City should file
4 for bankruptcy?

5 A. We -- as I said, we may have had one
6 or two. I remember one week in there in July was
7 the 4th of July holiday week, and I don't think we
8 had a meeting there. But I -- I don't recall
9 specifically the dates of the meeting. I think we
10 may have had one or two one-on-ones.

11 Q. Okay.

12 So in those one-on -- one-on-ones,
13 those one or two one-on-ones --

14 A. Um-hum.

15 Q. -- to the best of your recollection,
16 what did you say to the Governor in connection
17 with the issue about when the petition should be
18 filed?

19 A. All I said to the Governor is we
20 continue -- I understand that we're trying to work
21 towards some resolutions; we hope people take us
22 seriously; we hope they're listening to what we're

<p style="text-align: right;">Page 448</p> <p>1 saying. I'm really not hearing any debate on the 2 level of debt. I'm hearing some people being 3 concerned about, you know, what our proposal is. 4 We hope they make a resolution. Towards the end, 5 the question was hopefully we will be able to work 6 things out. 7 Q. And did -- what did the Governor say, 8 to the best of your recollection, in those 9 one-on-ones? 10 A. Thank you for the information. You 11 know, I appreciate your trying to do -- you're 12 doing a good job; I appreciate the job you're 13 trying to do. This is going to be difficult. 14 Keep trying to work towards a resolution. You 15 know, it -- make the right decision; it's 16 ultimately your call. 17 Q. Did he ever give you any view as to 18 what he thought you should do or what the City 19 should do in connection with the timing of the 20 filing? 21 A. No. 22 Q. Did you ever have any one-on-one</p>	<p style="text-align: right;">Page 450</p> <p>1 implications," I mean that in a broad sense, so 2 public reaction is -- 3 A. Oh. 4 Q. -- broadly -- broadly, would it -- 5 would it be included within that? 6 A. Well, if you say "public reaction," 7 yeah, we probably did have discussions about 8 potential public reaction. 9 Q. And what -- and what did you -- what 10 did you say, or what did he say about that? 11 A. Generally, you know, this -- this 12 would be -- and this is towards the end -- well, 13 you know, I don't know if -- I'm trying to recall 14 now. I don't know if we had discussions about 15 that prior to the week of the filing. Because I 16 don't think we had that many one-on-one meetings 17 in -- in between June 14th and July because of the 18 holiday. 19 So there may have been a discussion, 20 but I don't think it was in a one-on-one meeting. 21 I think it was in one of the Detroit team meetings 22 the week before the filing --</p>
<p style="text-align: right;">Page 449</p> <p>1 meetings with the Governor in which he or you 2 discussed what the political implications might be 3 of a bankruptcy filing? 4 A. It's -- the discussion we had earlier 5 this morning about political implications, and I'm 6 going to -- you know, that's -- that's a broad 7 discussion from people being angry to editorial 8 pages, things like that. 9 So there -- there may have been some 10 discussion in that regard. But I don't recall 11 anything particularly political about our 12 discussions. 13 Q. Okay. Well, I -- I -- I didn't mean 14 to ask you about whether there's anything 15 political about your discussions. But my question 16 was, in any one of your one-on-ones with the 17 Governor, was there any discussion between the two 18 of you, whether you were saying something or 19 whether he was saying something, about what might 20 be the political implications of the bankruptcy 21 filing? 22 And when I say "political</p>	<p style="text-align: right;">Page 451</p> <p>1 Q. Okay. 2 A. -- that was the Friday. 3 Q. So at one of -- your testimony is 4 that at one of the Detroit team meetings, there 5 was -- before the filing, there was the discuss 6 -- a discussion about what might have been the 7 political implications of the filing? 8 A. The political implications as you 9 just defined it meaning public reaction. 10 Q. Well, let -- let me just be clear -- 11 A. Okay. 12 Q. -- it -- it would include public 13 reaction. 14 A. Okay. 15 Well, without getting into 16 discussions, because there were attorneys at that 17 meeting, and I don't -- here again, I want to be 18 careful about the privilege. If you include the 19 definition spanning from political implications 20 meaning potential public reaction, I believe there 21 were discussions in that regard, but not in the 22 sense that political reactions should in any way</p>

<p style="text-align: right;">Page 452</p> <p>1 impact the decision that we needed to make.</p> <p>2 The discussions were always about</p> <p>3 what's the best decision; are we making progress;</p> <p>4 the discretion is up to me, within my authority,</p> <p>5 to make a recommendation; and if I make a</p> <p>6 recommendation, the Governor would take it up in</p> <p>7 due course.</p> <p>8 Q. What was said at -- was this said --</p> <p>9 was this discussion that you just testified about</p> <p>10 at one or more of the Detroit -- the Detroit team</p> <p>11 meetings?</p> <p>12 MR. SHUMAKER: You say "this</p> <p>13 discussion," are you talking about the discussion</p> <p>14 about the political --</p> <p>15 MR. DECHAIRA: Yeah, right.</p> <p>16 MR. SHUMAKER: -- implications?</p> <p>17 MR. DECHAIRA: Correct.</p> <p>18 THE WITNESS: I believe that when you</p> <p>19 say "political implications," you know, I don't</p> <p>20 want to give the impression that there was</p> <p>21 something overt -- there was some overt concern</p> <p>22 about the political implications. Our general</p>	<p style="text-align: right;">Page 454</p> <p>1 it.</p> <p>2 We were being involved in litigation,</p> <p>3 as I said before on September 16th, and the</p> <p>4 general discussion was we need to make some</p> <p>5 decisions, let's make the right decision</p> <p>6 irrespective of any political considerations.</p> <p>7 Q. Mr. Orr, are you paid by the State of</p> <p>8 Michigan?</p> <p>9 A. I believe so.</p> <p>10 Q. Okay. Is it -- is it correct that</p> <p>11 you're a -- you're an employee -- are you an</p> <p>12 employee of the State of Michigan?</p> <p>13 A. No, I'm a contractor to the State of</p> <p>14 Michigan.</p> <p>15 Q. Okay. You're an -- you're an</p> <p>16 agent -- are you an agent of the State of</p> <p>17 Michigan?</p> <p>18 MR. SHUMAKER: Objection --</p> <p>19 THE WITNESS: I --</p> <p>20 MR. SHUMAKER: -- calls for a legal</p> <p>21 conclusion.</p> <p>22 THE WITNESS: Yeah, that's what I was</p>
<p style="text-align: right;">Page 453</p> <p>1 discussions were we were going to do the right</p> <p>2 thing as we saw fit --</p> <p>3 BY MR. DECHAIRA:</p> <p>4 Q. Okay.</p> <p>5 A. -- they were not being driven by</p> <p>6 political concerns. We were aware that it would</p> <p>7 garner public attention, but we were still going</p> <p>8 to do the right thing.</p> <p>9 Q. Can you tell me who said what at</p> <p>10 those meetings about that -- the issue that you're</p> <p>11 talking about?</p> <p>12 A. Here again, there were attorneys</p> <p>13 present at that meeting giving legal advice, so</p> <p>14 I'm going to see if I can answer the question</p> <p>15 without implicating any of the legal advice.</p> <p>16 And as I just said, the discussion</p> <p>17 generally centered around we're not getting the</p> <p>18 progress that we want. As I said at the June 14th</p> <p>19 meeting, we're not getting the progress we need.</p> <p>20 We had to make some difficult decisions. As I</p> <p>21 said at the June 10th meeting, bankruptcy is</p> <p>22 potentially an option, but we don't want to use</p>	<p style="text-align: right;">Page 455</p> <p>1 going to say.</p> <p>2 BY MR. DECHAIRA:</p> <p>3 Q. Okay.</p> <p>4 Do you consider yourself bound by the</p> <p>5 laws and the Constitution of the State of</p> <p>6 Michigan?</p> <p>7 A. I consider myself bound by the laws</p> <p>8 in the Constitution of the United States and the</p> <p>9 State of Michigan.</p> <p>10 Q. And do you consider yourself bound by</p> <p>11 the interpretations of the laws and Constitution</p> <p>12 of the State of Michigan that are made by the</p> <p>13 Michigan Attorney General?</p> <p>14 A. I consider myself bound by the laws</p> <p>15 of the U.S. Constitution and the State of Michigan</p> <p>16 as interpreted by the Federal courts.</p> <p>17 Q. But not the Attorney -- Attorney</p> <p>18 General of the State of Michigan?</p> <p>19 A. Not necessarily. If -- if there's a</p> <p>20 law or a ruling by a Court, I would think that</p> <p>21 supersedes the interpretation of an attorney</p> <p>22 general.</p>



<p style="text-align: right;">Page 456</p> <p>1 Q. Okay. In the absence of a ruling by 2 a Court, do you consider yourself as -- in your 3 capacity as an emergency manager, bound by the 4 interpretations of the Michigan Constitution made 5 by the Michigan Attorney General? 6 A. As I just said, I consider myself 7 bound by the laws of the United States and the 8 State of Michigan as interpreted ultimately by a 9 Court. 10 Q. Right. 11 But my question is, in the absence of 12 a Court ruling on a particular question, do you 13 consider yourself -- on a particular question of 14 Michigan law, do you consider yourself bound by 15 the interpretation of the Michigan Attorney 16 General? 17 A. I'll repeat my answer. 18 I understand what you're getting at. 19 But I'll repeat my answer. 20 I feel ultimately the question has to 21 resolve -- be resolved by the courts of the 22 United States. And I've said that before, and</p>	<p style="text-align: right;">Page 458</p> <p>1 February 7th, 2013? 2 Do you see that? 3 A. Yes. 4 Q. Okay. 5 And then you see there appears to be 6 a schedule under that? 7 A. Yes. 8 Q. Okay. Did you meet with Andy Dillon, 9 or did you go out to lunch with Andy Dillon and 10 another person on Monday, February 11th? 11 A. Yes. 12 Q. And who was the other person? 13 A. I went out to lunch, actually, with 14 three people: Andy Dillon, Brom Stibitz, and 15 Tom Saxton. 16 Q. Who are those two other people? 17 A. Two other people are employees of the 18 Treasury Department and work under Andy Dillon. 19 Q. Okay. And what was discussed at that 20 lunch? 21 A. Me potentially -- 22 MR. SHUMAKER: Let me just -- they're</p>
<p style="text-align: right;">Page 457</p> <p>1 that's the position we've taken. 2 Q. Did you ever speak to the Governor in 3 a one-on-one meeting about the absence of 4 contingencies in his authorization letter? 5 A. No. 6 Q. I'd like to show you what I'll ask to 7 have marked as Exhibit 23. 8 - - - 9 (Whereupon, e-mail string was marked, 10 for identification purposes, as Orr 11 Deposition Exhibit Number 23.) 12 - - - 13 MR. DECHIARA: And for the record -- 14 THE COURT REPORTER: Hold on. 15 (Sotto voce comments by counsel and 16 court reporter.) 17 MR. DECHIARA: Are we on the record? 18 BY MR. DECHAIRA: 19 Q. Mr. Orr, if you look at Exhibit 23, 20 do you see that the bottom two-thirds of the page 21 is in -- appears to be an e-mail from 22 Richard Baird to various people, dated</p>	<p style="text-align: right;">Page 459</p> <p>1 not lawyers; is that correct? 2 THE WITNESS: I don't know if Brom 3 and Tom are. 4 BY MR. DECHAIRA: 5 Q. Well, I guess that was the question, 6 is, were they acting in -- in their capacity as 7 attorneys for the State during that lunch? 8 A. I don't know if Brom and -- and Tom 9 Saxton are attorneys. 10 MR. SHUMAKER: You can -- you can 11 answer. 12 THE WITNESS: Okay. 13 This -- my understanding what this is 14 was a schedule for me to come and discuss their 15 interests in me applying to become the emergency 16 manager for the City of Detroit. 17 BY MR. DECHAIRA: 18 Q. Right. 19 But what was -- do you have a 20 recollection of what you talked about at lunch? 21 A. Yeah, generally, what the statute 22 required, the financial stability agreement</p>



<p style="text-align: right;">Page 460</p> <p>1 provisions, potentially when I would be able to --</p> <p>2 to -- to apply; generally, sort of high-level</p> <p>3 preliminary discussions about becoming the EM.</p> <p>4 Q. Did you talk about pensions?</p> <p>5 A. No, we didn't talk about the detail.</p> <p>6 I wish I had.</p> <p>7 Q. Did you -- after lunch, did you meet</p> <p>8 with the Governor and Mr. Baird?</p> <p>9 A. Yes.</p> <p>10 Q. And who else was present at --</p> <p>11 present, if anyone, at that meeting?</p> <p>12 A. I -- I believe his scheduler,</p> <p>13 Allison, walked me into the room, and it was just</p> <p>14 me, the Governor and Rich Baird.</p> <p>15 Q. And do you recall what you talked</p> <p>16 about in that meeting?</p> <p>17 A. Very high level. This was a -- a --</p> <p>18 a meet-and-greet, as I call it; get to know you;</p> <p>19 are you interested? Frankly, at this time, I was</p> <p>20 still on the fence as to whether or not I would</p> <p>21 apply for the job, and this -- these were</p> <p>22 discussions about, well, this is what the job</p>	<p style="text-align: right;">Page 462</p> <p>1 Q. Did they -- did Mr. Baird or the</p> <p>2 Governor express any views about what they thought</p> <p>3 of the substance of the ideas that were put forth</p> <p>4 in the Jones Day pitch book?</p> <p>5 A. No, not really. They -- they -- I</p> <p>6 mean, all they ever said was it -- it was a good</p> <p>7 pitch book, but there was not -- there was no</p> <p>8 substantive discussion during these meetings.</p> <p>9 Q. Mr. Orr, I would like to show you</p> <p>10 what I'll now mark as Exhibit 24. It's a</p> <p>11 document -- it's a two-page document. It says at</p> <p>12 the top, Is the Emergency Manager Moving Fast</p> <p>13 Enough, question mark. It's Bates stamped</p> <p>14 DTMI00113909 --</p> <p>15 A. Right.</p> <p>16 Q. -- and -10 --</p> <p>17 THE COURT REPORTER: Do you want me</p> <p>18 to mark it?</p> <p>19 MR. DECHAIRA: Yes, please, as</p> <p>20 Exhibit 24.</p> <p>21 - - -</p> <p>22 (Whereupon, Excerpt from report of</p>
<p style="text-align: right;">Page 461</p> <p>1 would entail. We're doing our due diligence.</p> <p>2 There's some other candidates we're considering,</p> <p>3 but we would like you to be interested, things</p> <p>4 along those lines.</p> <p>5 Q. Did they say who the other candidates</p> <p>6 were?</p> <p>7 A. No, they did not.</p> <p>8 Q. Did they talk about the pitch meeting</p> <p>9 that you participated in earlier?</p> <p>10 A. No, not so much -- tangentially, I</p> <p>11 mean, that -- that discussions were about, you</p> <p>12 know, we -- we -- we saw your firm's pitch at the</p> <p>13 meeting; we were impressed with your passion for</p> <p>14 the City; how you had been a Michigander; the work</p> <p>15 you did on other cases related to the City; you</p> <p>16 know, would you -- would you at least -- and this</p> <p>17 was more -- as I interpreted it, this was more</p> <p>18 getting me to -- I was still taking a position I</p> <p>19 don't want the job, but this was more me trying to</p> <p>20 explore it a little bit and see what it would</p> <p>21 entail, and them saying that it's probably -- we</p> <p>22 would appreciate it if you would consider it.</p>	<p style="text-align: right;">Page 463</p> <p>1 Emergency Manager was marked, for</p> <p>2 identification purposes, as</p> <p>3 Deposition Exhibit Number 24.)</p> <p>4 - - -</p> <p>5 THE WITNESS: Thank you.</p> <p>6 THE COURT REPORTER: Um-hum.</p> <p>7 BY MR. DECHAIRA:</p> <p>8 Q. Can you identify what this document</p> <p>9 is?</p> <p>10 A. Is this a excerpt from one of my</p> <p>11 reports --</p> <p>12 Q. I'm --</p> <p>13 A. -- you're asking me?</p> <p>14 Q. I'm asking you.</p> <p>15 A. Yeah, because I'd -- I'd -- I'm --</p> <p>16 no. Can I identify this document is?</p> <p>17 No, it speaks for itself.</p> <p>18 Q. Well, let me -- I mean, have you ever</p> <p>19 seen this document before?</p> <p>20 A. I think I've seen this document</p> <p>21 before, but I don't think this is from -- I don't</p> <p>22 know if this is from my office.</p>



<p style="text-align: right;">Page 464</p> <p>1 Q. You don't know who prepared this?</p> <p>2 A. No.</p> <p>3 Q. And you don't know what purpose this</p> <p>4 document was used for?</p> <p>5 A. No. Now, that's not saying it could</p> <p>6 have been prepared from my office, but it could</p> <p>7 have been done in our communications division. I</p> <p>8 just -- there's so many documents that are</p> <p>9 prepared in my office, I'm not -- I don't see all</p> <p>10 of them.</p> <p>11 Q. I don't want you to guess or</p> <p>12 speculate.</p> <p>13 A. Yeah; no, I don't -- I don't --</p> <p>14 Q. You don't know?</p> <p>15 A. -- yeah, I don't know.</p> <p>16 Q. Okay.</p> <p>17 I'd like to show you what I'll ask to</p> <p>18 have marked as Exhibit 25, which is a set of</p> <p>19 e-mail exchanges stamped JD-RD-0000354.</p> <p>20 - - -</p> <p>21 (Whereupon, e-mail string was marked,</p> <p>22 for identification purposes, as</p>	<p style="text-align: right;">Page 466</p> <p>1 this -- this -- in this e-mail, you're referring</p> <p>2 to the meeting you had with Mr. -- with the</p> <p>3 Governor and Mr. Baird?</p> <p>4 A. Yeah, I think the e-mail chain is, as</p> <p>5 I said today, there may have been back-and-forth</p> <p>6 pleasantries, and this is the type of stuff that</p> <p>7 I -- the type of e-mails I was talking about.</p> <p>8 It's the Governor saying to me, you know, nice to</p> <p>9 meet you; excited about the prospect of working</p> <p>10 with you; job is difficult. I mean, it speaks for</p> <p>11 itself.</p> <p>12 He talks about the job, the -- the --</p> <p>13 the collaborative irrational acts. That's people</p> <p>14 doing things that seem --</p> <p>15 Q. And --</p> <p>16 A. -- insurmountable.</p> <p>17 Q. -- Mr. Orr, I don't mean to cut you</p> <p>18 off. I just asked if this was the meeting that</p> <p>19 you were referring to --</p> <p>20 A. Yeah, I think -</p> <p>21 Q. -- I think the answer is yes --</p> <p>22 A. -- this all speaks for it itself.</p>
<p style="text-align: right;">Page 465</p> <p>1 Deposition Exhibit Number 25.)</p> <p>2 - - -</p> <p>3 THE COURT REPORTER: Hold on.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 BY MR. DECHAIRA:</p> <p>6 Q. Let me refer you to the bottom of the</p> <p>7 first page. Do you see there's an e-mail from you</p> <p>8 to the Governor?</p> <p>9 A. Yes.</p> <p>10 Q. Dated February 13th, 2013?</p> <p>11 A. Yes.</p> <p>12 Q. It refers to a meeting you had</p> <p>13 with -- with the Governor.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. When was that meeting or was -- was</p> <p>17 there a meeting?</p> <p>18 A. I think this refers to the meeting</p> <p>19 schedule that you showed me on -- for</p> <p>20 February 11th. I think this is a follow-up to</p> <p>21 that meeting.</p> <p>22 Q. Okay. So this is the meeting --</p>	<p style="text-align: right;">Page 467</p> <p>1 Yeah, this all speaks for itself.</p> <p>2 Q. Let me refer -- show you a document</p> <p>3 I'll ask to have marked as Exhibit 26. This is a</p> <p>4 two-page document stamped at the bottom</p> <p>5 JD-RD-0000334 and -35 on the second page.</p> <p>6 A. I think this is -- I think this is</p> <p>7 Exhibit 20.</p> <p>8 Q. Oh, it may be.</p> <p>9 A. I think we already talked about this.</p> <p>10 Q. Okay. Well --</p> <p>11 A. Yeah. Yeah, it's the same -- no, I</p> <p>12 have it. It's the same thing.</p> <p>13 Q. Okay. I don't have Exhibit 20.</p> <p>14 Okay. Thank you for pointing that</p> <p>15 out.</p> <p>16 A. Yeah.</p> <p>17 Q. Let me refer you to Exhibit 20.</p> <p>18 A. Okay.</p> <p>19 Yeah, it's the same -- yes, it's the</p> <p>20 same document.</p> <p>21 Q. So if you look in the e-mail that you</p> <p>22 wrote to Mr. Baird at the top of Exhibit 20 --</p>



<p style="text-align: right;">Page 468</p> <p>1 A. Um-hum.</p> <p>2 Q. -- towards the bottom of the</p> <p>3 paragraph -- that block of text that's at the top</p> <p>4 of the first page, it says -- there's a sentence</p> <p>5 that says, In the interim, when you have time, I'd</p> <p>6 like to speak with you about the timing and</p> <p>7 process for the retention of the EM and legal</p> <p>8 counsel --</p> <p>9 A. Yes.</p> <p>10 Q. -- you wrote that?</p> <p>11 A. Yes.</p> <p>12 Q. And what -- what -- did you -- what</p> <p>13 did you mean when you wrote that?</p> <p>14 A. Oh, I just meant -- what I had said I</p> <p>15 think at the February 11th meeting is that my</p> <p>16 consideration as EM -- there were a number of news</p> <p>17 reports going around about how I would not have to</p> <p>18 resign from my firm, and what I said in order to</p> <p>19 remove issues -- because trustees and bankers, as</p> <p>20 I suspect you know, don't typically resign from</p> <p>21 their law firm -- in order to remove any issues</p> <p>22 with that regard, that I'd probably have to resign</p>	<p style="text-align: right;">Page 470</p> <p>1 I just want it to be neutral if I'm</p> <p>2 going to consider this, because I don't want to</p> <p>3 put my interests above the interests of my then</p> <p>4 law firm.</p> <p>5 Q. Okay. And then in -- in the e-mail</p> <p>6 you write, I'd like to speak with you --</p> <p>7 A. Yes.</p> <p>8 Q. -- did you subsequently speak to</p> <p>9 Mr. Baird about this topic?</p> <p>10 A. I don't know if I spoke to him about</p> <p>11 this topic. I was probably -- I don't recall if I</p> <p>12 spoke to him about this topic. I think I probably</p> <p>13 did speak to him subsequent to this e-mail.</p> <p>14 Q. Let me show you what I'll mark as</p> <p>15 Exhibit 27 --</p> <p>16 THE COURT REPORTER: Twenty-six.</p> <p>17 MR. DECHAIRA: -- 26, thank you.</p> <p>18 Right.</p> <p>19 What I had offered as 26 I'm not</p> <p>20 offering because, as Mr. Orr correctly pointed</p> <p>21 out, the e-mail was already in -- it had already</p> <p>22 been marked as Exhibit 20.</p>
<p style="text-align: right;">Page 469</p> <p>1 from my law firm.</p> <p>2 And what I was saying here is -- and</p> <p>3 what I said at the February 11th meeting was,</p> <p>4 look, I don't want my potential candidacy as EM to</p> <p>5 either help or hurt Jones Day, who originally came</p> <p>6 into this for pitching the legal work. I want it</p> <p>7 to be neutral as far as what I do.</p> <p>8 And -- and to that regard, I think</p> <p>9 there's an e-mail that we talked about,</p> <p>10 September 16th, where I recused myself from the</p> <p>11 Jones Day selection process and I was considering,</p> <p>12 you know, how I would extricate myself from my</p> <p>13 firm.</p> <p>14 I was involved in -- in a couple of</p> <p>15 very important matters -- in the midst of them, as</p> <p>16 a matter of fact -- and all I was saying here is</p> <p>17 let's talk about the process for both the</p> <p>18 retention of the EM and legal counsel .</p> <p>19 And what I said February 11th was</p> <p>20 just, look, whoever -- I'll work with whoever it</p> <p>21 is, but I don't want this to hurt Jones Day in any</p> <p>22 way. I don't necessarily want it to help.</p>	<p style="text-align: right;">Page 471</p> <p>1 - - -</p> <p>2 (Whereupon, Contract for Emergency</p> <p>3 Financial Manager Services was</p> <p>4 marked, for identification purposes,</p> <p>5 as Deposition Exhibit Number 26.)</p> <p>6 - - -</p> <p>7 BY MR. DECHAIRA:</p> <p>8 Q. And I'll identify Exhibit 26 as a</p> <p>9 multipage document, the first page is stamped</p> <p>10 DTMI00113325.</p> <p>11 Mr. Orr, is this your employment</p> <p>12 contract?</p> <p>13 A. No.</p> <p>14 Q. Is -- what is this document? Do you</p> <p>15 know?</p> <p>16 A. This document is -- this document is</p> <p>17 substantially similar to my ultimate employment</p> <p>18 contract. My employment contract, which I think</p> <p>19 is on the Web site, has the names written in.</p> <p>20 My employment contract, the initial</p> <p>21 one, I think was executed on the 25th or 26th, and</p> <p>22 then a subsequent one was executed on the 28th.</p>

<p style="text-align: right;">Page 472</p> <p>1 Q. And the subsequent one sets out what 2 your compensation is from the City? 3 A. Yes, substantially, the -- my actual 4 contract is substantially similar. You said "from 5 the City." The subsequent one -- the com -- the 6 compensation on Page 3.2 is the same -- 7 Q. Okay. 8 A. -- but it's substantially similar to 9 my contract. But the actual contract is different 10 from this document (indicating). 11 Q. Okay. And then the last sentence on 12 Section 3.2 says, The emergency financial manager 13 shall not receive or accept any compensation from 14 the City except as provided for in this contract. 15 My question is, do you receive any 16 compensation from anybody or any entity for your 17 services as emergency manager other than what's 18 set out in Section 3.2 here or in the analogous 19 3.2 of what -- of your current contract? 20 A. Not one dime. 21 Q. Well, you may -- you may receive 22 housing, a pay for your housing -- pay for your</p>	<p style="text-align: right;">Page 474</p> <p>1 MR. DECHAIRA: Yes, please. 2 THE VIDEOGRAPHER: Going off the 3 record at 1359. 4 - - - 5 (Whereupon, a discussion was held off 6 the record.) 7 - - - 8 THE VIDEOGRAPHER: Going back on the 9 record at 1401. 10 BY MR. DECHAIRA: 11 Q. Mr. Orr, do you know what other law 12 firms pitched for the job of restructuring counsel 13 for the City besides Jones Day? 14 A. I -- I don't know them all. I -- I 15 know that there were approximately 20 other law 16 firms, but I don't -- I -- I think Foley was one. 17 I think Weil was one. I -- I don't recall them 18 all, no. 19 Q. Okay. Do you know who else was 20 considered for the EM position besides yourself? 21 A. I do not. 22 Q. Okay.</p>
<p style="text-align: right;">Page 473</p> <p>1 housing, correct? 2 A. Yeah; but I think you said as set out 3 in the contract. Maybe you meant 3.2. But 4 whatever we've discussed today, the housing, but I 5 don't receive that. That's -- I receive the 6 housing. I don't get four -- \$4,200 or whatever 7 the rent is; I've never seen it. I get the 8 compensation as stated in the contract, and that's 9 it. 10 Q. Right. But you -- you have -- you 11 live in the housing, correct? 12 A. I live in the housing, yes. 13 Q. And you don't pay for it, correct? 14 A. I don't pay for it -- 15 Q. Okay. 16 A. -- that's correct. 17 MR. DECHAIRA: If we -- if I can just 18 have a minute. 19 MR. SHUMAKER: Sure. 20 (Pause.) 21 THE VIDEOGRAPHER: Do you want to go 22 off the record?</p>	<p style="text-align: right;">Page 475</p> <p>1 A. There was some published reports, but 2 I don't recall early on. That's all -- 3 Q. Would -- 4 A. -- I -- I don't know with specificity 5 who it was. I just remember there were some 6 reports. 7 Q. Okay. Whether -- whether from any 8 source, whether public or otherwise, do you have 9 any -- as you sit here today, do you remember any 10 names of anyone who was considered as EM other 11 than yourself? 12 A. The -- the only report that I 13 remember with specificity is that Andy Williams, 14 the -- the -- essentially the counterpart in the 15 D.C. control board was reported had been 16 considered, and he turned it down. He's a lot 17 smarter than me. 18 Q. Anyone else? 19 A. Not that I remember. 20 (Sotto voce discussion.) 21 THE WITNESS: He has better judgment 22 than me.</p>



<p style="text-align: right;">Page 476</p> <p>1 BY MR. DECHAIRA:</p> <p>2 Q. Do you know who Bill Brandt is?</p> <p>3 A. I've -- I've heard that name before.</p> <p>4 I -- I think he was -- he's a bankruptcy trustee.</p> <p>5 Q. Do you know whether he was considered</p> <p>6 for any -- for the EM position?</p> <p>7 A. I do not.</p> <p>8 Q. Do you know whether he was considered</p> <p>9 for any position as -- any professional position</p> <p>10 in connection with the restructuring of the City</p> <p>11 of Detroit?</p> <p>12 A. I do not.</p> <p>13 Q. Okay.</p> <p>14 MR. DECHAIRA: Thank you for your</p> <p>15 time, Mr. Orr. I have no further questions.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. ULLMAN: I have a few follow-ups.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 478</p> <p>1 Q. Okay. And you see we had talked</p> <p>2 about the 250 million general fund relative to the</p> <p>3 650 million total unfunded liability?</p> <p>4 A. Yes.</p> <p>5 Q. And we had calculated ratio</p> <p>6 approximately 38-1/2 percent?</p> <p>7 A. Right.</p> <p>8 Q. And I think previously, when I was</p> <p>9 asking about this, I had referred to the</p> <p>10 38.5 percent as being the amount of the unfunded</p> <p>11 liability allocable to the Department of Water and</p> <p>12 Sewer. I think I -- I misspoke in that, because</p> <p>13 the 250 would be -- the 38.5 percent would be the</p> <p>14 amount allocable to the general fund, correct?</p> <p>15 A. Yes, I -- I think that's accurate,</p> <p>16 yes, we were talking about the numbers, but --</p> <p>17 Q. We had them backwards?</p> <p>18 A. -- we had them backwards.</p> <p>19 Q. And so if the -- if the math is right</p> <p>20 and it was about 38.5 percent, then the percentage</p> <p>21 of the unfunded liability allocable to the</p> <p>22 Department of Water and Sewer would be</p>
<p style="text-align: right;">Page 477</p> <p>1 - - -</p> <p>2 EXAMINATION (CONTINUED)</p> <p>3 BY COUNSEL FOR RETIREES COMMITTEE</p> <p>4 - - -</p> <p>5 BY MR. ULLMAN:</p> <p>6 Q. Hello, Mr. Orr.</p> <p>7 A. Hello, Mr. Ullman.</p> <p>8 Q. I just have a few questions for you</p> <p>9 just to clarify the record, because I saw when I</p> <p>10 was looking at the transcript that as sometimes</p> <p>11 happens when lawyers do math, I got some numbers</p> <p>12 transposed.</p> <p>13 A. Okay.</p> <p>14 Q. So if you could turn back to</p> <p>15 Exhibit 22.</p> <p>16 A. Okay.</p> <p>17 Um-hum.</p> <p>18 Okay.</p> <p>19 Q. And if you could look at the Bates</p> <p>20 page that we were looking at before which ends in</p> <p>21 422.</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 479</p> <p>1 approximately 61.5 percent?</p> <p>2 A. But, remember, I said that you have</p> <p>3 to be careful with trying to draw a straight-line</p> <p>4 comparison between the two numbers you may</p> <p>5 calculate in. But generally speaking, if we're</p> <p>6 just talking about the math, that -- that --</p> <p>7 Q. Right --</p> <p>8 A. -- would be the estimate.</p> <p>9 Q. -- I'm right here just talking about</p> <p>10 the ratio on the -- the number that's referred to</p> <p>11 as the 650 -- the approximately 650 by the Mayor.</p> <p>12 A. Yes.</p> <p>13 Q. And then I think the next question I</p> <p>14 asked you, which I think is what you were alluding</p> <p>15 to, that if you assumed a larger liability figure,</p> <p>16 would that ratio continue to hold; and my</p> <p>17 recollection is, your answer was roughly it would,</p> <p>18 but you may have to, you know, fine-tune the math.</p> <p>19 A. It -- it -- it might roughly hold,</p> <p>20 but you need to be careful to not draw the</p> <p>21 conclusion that is -- it's exactly comparable.</p> <p>22 Q. Okay. I understand.</p>



<p style="text-align: right;">Page 480</p> <p>1 A. Okay.</p> <p>2 Q. Okay.</p> <p>3 And then the other question I have</p> <p>4 for you -- this is referring to the unfunded</p> <p>5 pension liability --</p> <p>6 A. Um-hum.</p> <p>7 Q. -- you're also familiar with the</p> <p>8 medical benefits for retirees --</p> <p>9 A. Yes.</p> <p>10 Q. -- the health -- and I think that's</p> <p>11 sometimes referred to as OPEB?</p> <p>12 A. Yes, other [sic] employee benefits.</p> <p>13 Q. Okay. And for the OPEB is -- are --</p> <p>14 is the -- is the situation similar that some</p> <p>15 amount of the total OPEB liability that the City</p> <p>16 faces is allocable to sources other than the</p> <p>17 general fund?</p> <p>18 A. You -- you know, I think it is; but</p> <p>19 I'm not recalling that mechanism as well as I</p> <p>20 recall the pension mechanism, but I think it is.</p> <p>21 Q. Okay. And would then some portion of</p> <p>22 the total OPEB unfunded liability be allocable</p>	<p style="text-align: right;">Page 482</p> <p>1 MR. ULLMAN: Okay. Could I ask for</p> <p>2 any documents relating to that to be produced,</p> <p>3 Greg?</p> <p>4 MR. SHUMAKER: You can certainly put</p> <p>5 that in writing and look into it. I'm pretty sure</p> <p>6 that that has already been produced, but we'll</p> <p>7 certainly look into it.</p> <p>8 MR. ULLMAN: Okay.</p> <p>9 I don't believe I have anything else,</p> <p>10 so --</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. ULLMAN: -- anything further</p> <p>13 from -- no.</p> <p>14 MR. DECHIARA: I think Jennifer</p> <p>15 Green.</p> <p>16 MR. ULLMAN: Jennifer, are you there?</p> <p>17 MS. GREEN: No.</p> <p>18 MR. ULLMAN: Okay.</p> <p>19 MS. GREEN: My turn?</p> <p>20 MR. ULLMAN: Yeah, if you are</p> <p>21 ready -- if you have questions and you want to go.</p> <p>22 MS. GREEN: I literally have a</p>
<p style="text-align: right;">Page 481</p> <p>1 also to the Department of Water and Sewer to their</p> <p>2 retirees?</p> <p>3 A. It might well be, but I'd need to</p> <p>4 confirm that.</p> <p>5 Q. Okay. And have you done any analysis</p> <p>6 of that question?</p> <p>7 A. Yes --</p> <p>8 Q. Okay.</p> <p>9 A. -- well, our contractors have done an</p> <p>10 analysis of the question.</p> <p>11 Q. Okay. And who specifically has done</p> <p>12 an analysis of that?</p> <p>13 A. Oh, I think our team at -- the entire</p> <p>14 team: Conway MacKenzie, Ernst & Young,</p> <p>15 Miller Buckfire.</p> <p>16 Q. And do you recall their general</p> <p>17 conclusions to what percentage of the total</p> <p>18 unfunded OPEB liability is allocable to the -- A,</p> <p>19 to the Department of Water of Sewer; or, B, some</p> <p>20 other fund or entity apart from the general fund?</p> <p>21 A. I'm -- I'm not -- I don't recall if</p> <p>22 it is, and I don't recall the percentage.</p>	<p style="text-align: right;">Page 483</p> <p>1 handful. Very quickly.</p> <p>2 MR. ULLMAN: Go -- go ahead. I'm</p> <p>3 done.</p> <p>4 Thank you very much, Mr. Orr.</p> <p>5 THE WITNESS: Thank you very much,</p> <p>6 Mr. Ullman.</p> <p>7 Hello, Jennifer -- hello, Ms. Green.</p> <p>8 - - -</p> <p>9 EXAMINATION (CONTINUED) BY COUNSEL FOR</p> <p>10 GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT AND</p> <p>11 THE POLICE AND FIRE RETIREMENT SYSTEM OF THE</p> <p>12 CITY OF DETROIT</p> <p>13 - - -</p> <p>14 BY MS. GREEN:</p> <p>15 Q. Hi, how are you?</p> <p>16 A. Just fine.</p> <p>17 Q. You began acting as emergency manager</p> <p>18 as of March 26th, and Jones Day was hired to</p> <p>19 represent the City after you became emergency</p> <p>20 manager, correct?</p> <p>21 A. The relationship was formalized after</p> <p>22 I became emergency manager, yes.</p>



<p style="text-align: right;">Page 484</p> <p>1 Q. Are you saying there was an informal 2 relationship before then? 3 A. No. As -- as I said before today, 4 the -- the question of when the attorney-client 5 privilege attaches isn't necessarily based upon 6 just a formalization of a relationship; it's based 7 upon one of confidence and reposed and -- and a 8 relationship is accepted. An exact date of that, 9 I don't know sitting here today from a legal 10 perspective. 11 Q. Can you tell me, from your view as 12 emergency manager, was the firm of Jones Day 13 acting as legal representation -- giving legal 14 representation to the City prior to your being 15 appointed EM on March 26th? 16 A. I don't -- I don't know. 17 I -- as I testified earlier today, I 18 recused myself from that process, so I don't know 19 when that relationship arose. 20 Q. Well, let me ask you this: You 21 worked at Jones Day, and you worked on the pitch 22 materials, correct?</p>	<p style="text-align: right;">Page 486</p> <p>1 the pitch, correct? 2 A. Yes. 3 Q. And similar to that, Jones Day was 4 never hired by the State of Michigan at any point 5 for any sort of representation, correct? 6 MR. SHUMAKER: Object to the form: 7 Foundation. 8 THE WITNESS: Yeah, I think I 9 testified earlier today -- I said earlier today, 10 I -- I don't know if Jones Day has ever 11 represented the State of Michigan, but -- but with 12 regard to this matter, I don't -- I don't know of 13 Jones Day representing the State of Michigan other 14 than -- 15 BY MS. GREEN: 16 Q. Okay. 17 A. -- through my office. 18 Q. So in 2011 and in 2012, and prior to 19 spring of 2013, you have no knowledge of there 20 being any attorney-client relationship between 21 Jones Day and the State of Michigan, correct? 22 A. I have no knowledge.</p>
<p style="text-align: right;">Page 485</p> <p>1 A. Yes. 2 Q. And so you were involved with the 3 process of the pitch and the PowerPoint? 4 A. Yes; but that was in early -- that 5 was in late January and early February, sometime 6 in February, and I think the e-mails have been 7 discussed in my prior deposition. 8 I -- I pulled myself out of that 9 process, it was in early February prior to the 10 meeting we discussed today. So I don't know what 11 happened after I recused myself. 12 Q. I understand that. I understand 13 that. 14 But what I'm saying is, the pitch 15 that occurred, you were not acting as legal 16 counsel when you did the pitch, right? 17 A. No, no, we were not -- 18 Q. Okay. 19 A. -- we were soliciting becoming legal 20 counsel. 21 Q. Exactly. 22 So at least it was some point after</p>	<p style="text-align: right;">Page 487</p> <p>1 Q. Okay. 2 And, certainly, I would assume if you 3 were preparing pitch materials in a PowerPoint, 4 where you were pitching Jones Day to the State and 5 to the City, you would've, I assume, included any 6 prior representation of the City and the State, 7 correct? 8 MR. SHUMAKER: Objection: calls for 9 speculation. 10 THE WITNESS: Calls for speculation, 11 that's what I was going to say. 12 It -- you know, I -- I don't know. 13 It would be speculative on my part to say that -- 14 that it may or may not included it. We -- I would 15 like to think that we -- before the retention, I 16 would like to think that any law firm would have 17 run a conflicts check. 18 I'm not sure whether or not that 19 would have been included in the pitch material. 20 BY MS. GREEN: 21 Q. Well, during the pitch, was there any 22 point where any of the Jones Day attorneys that</p>



<p style="text-align: right;">Page 488</p> <p>1 you were doing the pitch with said, oh, by the</p> <p>2 way, we were -- we were once your legal counsel,</p> <p>3 State of Michigan, or we were once your legal</p> <p>4 counsel, City of Detroit?</p> <p>5 MR. SHUMAKER: Objection to the form.</p> <p>6 THE WITNESS: As I said earlier</p> <p>7 today, the discussion quickly went off the pitch</p> <p>8 materials in the far-ranging; so I don't recall</p> <p>9 any -- any statement in that respect.</p> <p>10 BY MS. GREEN:</p> <p>11 Q. Okay.</p> <p>12 So you have no evidence that there</p> <p>13 was ever any attorney-client relationship between</p> <p>14 Jones Day and the State of Michigan; is that</p> <p>15 correct?</p> <p>16 MR. SHUMAKER: Object to the form.</p> <p>17 THE WITNESS: All -- all the</p> <p>18 questions I said earlier today, there -- there</p> <p>19 could have been. I'm not aware of any.</p> <p>20 MS. GREEN: Okay. That's the only</p> <p>21 question I have.</p> <p>22 THE WITNESS: Okay.</p>	<p style="text-align: right;">Page 490</p> <p>1 MR. DECHAIRA: Thank you.</p> <p>2 THE WITNESS: Um-hum.</p> <p>3 MR. SHUMAKER: Thank you, Counsel.</p> <p>4 THE WITNESS: Okay. Thank you.</p> <p>5 THE VIDEOGRAPHER: Going off the</p> <p>6 record at 1412. This marks the end of</p> <p>7 Tape Number 2. This also marks the end of the</p> <p>8 deposition.</p> <p>9 (Whereupon, at 2:12 p.m., the</p> <p>10 deposition was concluded.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 489</p> <p>1 MR. SHUMAKER: Thank you, Jennifer.</p> <p>2 MR. DECHAIRA: I have one question.</p> <p>3 ---</p> <p>4 EXAMINATION (CONTINUED) BY COUNSEL FOR</p> <p>5 UNITED AUTO WORKERS UNION</p> <p>6 ---</p> <p>7 BY MR. DECHAIRA:</p> <p>8 Q. Mr. Orr, do you know whether any of</p> <p>9 the liabilities of the Detroit -- Detroit's</p> <p>10 general pension fund are attributable to the</p> <p>11 pensions of employees or retirees of the Detroit</p> <p>12 public library system?</p> <p>13 MR. SHUMAKER: Getting pretty far</p> <p>14 afield here, Counselor.</p> <p>15 You can answer that one.</p> <p>16 THE WITNESS: I -- I -- specifically,</p> <p>17 library employees?</p> <p>18 I don't -- I don't know that. I know</p> <p>19 that they're attributable to GRS. Service</p> <p>20 employees are typically nonuniform. I don't know</p> <p>21 if it includes library employees. It might; it</p> <p>22 might not.</p>	<p style="text-align: right;">Page 491</p> <p>1 C E R T I F I C A T E</p> <p>2 DISTRICT OF COLUMBIA:</p> <p>3 I, Cindy L. Sebo, a Notary Public within</p> <p>4 and for the Jurisdiction aforesaid, do hereby</p> <p>5 certify that the foregoing deposition was taken</p> <p>6 before me, pursuant to notice, at the time and place</p> <p>7 indicated; that said deponent was by me duly sworn</p> <p>8 to tell the truth, the whole truth, and nothing but</p> <p>9 the truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition is</p> <p>13 a true record of the testimony given by the witness;</p> <p>14 and that I am neither of counsel nor kin to any</p> <p>15 party in said action, nor interested in the outcome</p> <p>16 thereof.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Cindy L. Sebo, RMR, CRR, RPR, CSR,</p> <p>22 CCR, CLR, RSA, Notary Public</p>



<p style="text-align: right;">Page 492</p> <p>1 Gregory M. Shumaker, Esquire 2 Jones Day 3 51 Louisiana Avenue, Northwest 4 Washington, D.C. 20001-2113</p> <p>5 6 IN RE: City of Detroit, Michigan</p> <p>7 Dear Mr. Shumaker:</p> <p>8 Enclosed please find your copy of the continued 9 deposition of KEVYN D. ORR, along with the original 10 signature page.</p> <p>11 As agreed, you will be responsible for 12 contacting the witness regarding reading and 13 signing the transcript.</p> <p>14 Within 30 days of receipt, please forward errata 15 sheet and original signature page signed to 16 opposing counsel.</p> <p>17 If you would like to change this procedure or if 18 you have any questions, please do not hesitate to 19 call.</p> <p>20 Thank you.</p> <p>21 Yours,</p> <p>22 Cindy L. Sebo, RMR, CRR, CSR, RPR, CCR, CLR, RSA Reporter/Notary</p>	<p style="text-align: right;">Page 494</p> <p>1 CERTIFICATE</p> <p>2 STATE OF :</p> <p>3 COUNTY/CITY OF :</p> <p>4 Before me, this day, personally appeared, 5 KEVYN D. ORR, who, being duly sworn, states that the 6 foregoing transcript of his/her Deposition, taken in 7 the matter, on the date, and at the time and place 8 set out on the title page hereof, constitutes a true 9 and accurate transcript of said deposition.</p> <p>10</p> <p>11 _____</p> <p>12 KEVYN D. ORR</p> <p>13 SUBSCRIBED and SWORN to before me this 14 _____ day of _____, 20____ in the 15 jurisdiction aforesaid.</p> <p>16</p> <p>17 _____</p> <p>18 My Commission Expires _____ Notary Public</p> <p>19 *If no changes need to be made on the following 20 two pages, place a check here ____, and return only 21 this signed page.</p> <p>22 DEPOSITION ERRATA SHEET</p>
<p style="text-align: right;">Page 493</p> <p>1 CAPTION</p> <p>2 The Continued Deposition of KEVYN D. 3 ORR taken in the matter, on the date, and at the 4 time and place set out on the title page hereof.</p> <p>5 It was requested that the deposition 6 be taken by the reporter and that same be reduced 7 to typewritten form.</p> <p>8 It was agreed by and between counsel 9 and the parties that the Deponent will read and 10 sign the transcript of said deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 495</p> <p>1 RE: Esquire Deposition Services, L.L.C.</p> <p>2 File No. 105824</p> <p>3 Case Caption: In Re: City of Detroit, Michigan</p> <p>4 Deponent: KEVYN D. ORR (Volume II)</p> <p>5 Deposition Date: Friday, October 4, 2013</p> <p>6</p> <p>7 To the Reporter:</p> <p>8 I have read the entire transcript of my 9 Deposition taken in the captioned matter or the same 10 has been read to me.</p> <p>11 I request that the following changes be entered 12 upon the record for the reasons indicated. I have 13 signed my name to the Errata Sheet and the 14 appropriate Certificate and authorize you to attach 15 both to the original transcript.</p> <p>16 Page No.____Line No.____Change to:_____</p> <p>17 _____</p> <p>18 Page No.____Line No.____Change to:_____</p> <p>19 _____</p> <p>20 Page No.____Line No.____Change to:_____</p> <p>21 _____</p> <p>22</p>



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22 KEVYN D. ORR



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